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## Current Topics.

### The late Mr. John Mews.

BY THE death of Mr. JOHN MEWS, English lawyers have lost one who, quietly and unostentatiously, did them lasting service in their study of case law. Early in his career at the Bar he became connected with the incomparable work with which his name has become so familiar, the "Digest of English Case Law," the revised edition of which is now rapidly approaching completion. In 1881 Mr. (now Sir) WILLES CHITTY and Mr. MEWS took up the work so long performed by FISHER, and collaborated in the production of the Digest for 1880. Sir WILLES CHITTY'S practice then becoming more absorbing, the Digests for the succeeding years, down to quite recently, were prepared under the sole editorship of Mr. MEWS, these being in due time consolidated into a series of stately volumes whose utility has been invaluable. To the cognate subject of law reporting Mr. MEWS was also attracted. In 1893 he contributed an article to "The Law Quarterly Review," on "The Present System of Law Reporting," pointing out its numerous demerits, especially in the reporting of so many unreportable cases, and suggesting various reforms. As the outcome of that article a new series of reports was launched under the title of "The Reports," with Mr. MEWS as editor, and with a staff which included many enthusiastic young barristers, including, among others, Sir HENRY NEWBOLT, who had not yet achieved fame as a poet. "The Reports" proved a gallant but short-lived adventure, and on their demise Mr. MEWS became editor of "The Law Journal Reports," a post he held for many years. Accuracy and concision were the qualities he ever aimed at, and these he sought, and with no little success, to instil into those who were trained under him.

### Judge's Marshal.

IN VIEW of the question, again raised in the House of Commons, whether the time has not come when, in the interests of economy, the office of judge's marshal should not be abolished, it may be of interest to inquire who this functionary is and what duties fall to be performed by him. The marshal is an officer who attends each judge on the assizes, swears the grand jury, and as COMTE DE FRANQUEVILLE, in his exhaustive work on "Le Système Judiciaire de la Grande Bretagne," happily puts it, is "en quelque sorte, l'aide de camp du juge." Appointed by the judge, he receives a fee of a few guineas per day, and so he spends a pleasant, if not very remunerative, holiday perambulating the circuit in dignified fashion in the train of his lordship. Usually the marshal is a young barrister, but call to the Bar is not an essential qualification for the post, and more than once a layman has acted in this capacity. Readers of MATTHEW ARNOLD'S letters will recall that on several occasions that distinguished writer, in the earlier stages of his career, acted as marshal to his father-in-law, Mr. Justice WIGHTMAN, an appointment which he much enjoyed, and which has left in his correspondence many delightful notices of the various incidents and personalities encountered on circuit. Like some other offices of assize that of marshal has been often threatened as now serving no useful purpose. In the work already mentioned, the COMTE DE FRANQUEVILLE says that it would be the natural thing to suppress many of these circuit appointments, and then he adds: "mais les juges ne sont pas tous de cet avis. On a déjà singulièremont réduit leur patronage; que diraient leur fils et leur neveux, si l'on abolissait encore les quasi-sinécures des circuits d'assises"? Whether the office of judge's marshal will survive much longer we do not profess to know, but it has often been observed that threatened institutions have a remarkable vitality.

### Refusing Finger Prints as Reason for no Bail.

IN HIS report on his inquiry into the *Sheppard Case*, in August, 1925, the late Mr. J. F. P. RAWLINSON, K.C., M.P., pointed out that the police have no power to compel a person to have his finger prints taken; and upon this finding the Home Secretary, in his letter of the 26th August, 1925, undertook to issue instructions to the police to ensure that prisoners should be informed of their right to object to have their finger prints taken. Those instructions were duly issued. They have had an odd effect, for police officers frequently "object to bail" on remand, on the ground that an accused person has refused to have his finger prints taken, a ground which some courts of summary jurisdiction adopt for refusing bail. This is to honour the instructions (which are based on the law) in the letter, but transgress them in the spirit, by putting the grievous compulsion of imprisonment upon the accused. In law there are but two good reasons for refusing bail, the first a reasonable opinion that the accused will, if bailed, fail to appear to answer the charge, and the second the like opinion that he will abuse his liberty by tampering with the witnesses for the prosecution, or otherwise seeking to impede the course of justice.

### Smoke and Negligence.

A NOTE might usefully be made of *Haywood* v. *L. & N.E.R. Co.*, *Times*, the 1st inst., because of the novel allegation of negligence that was put forward by the plaintiff in that case. The plaintiff, it appears, was a passenger on a char-a-banc, which came, at the top of a sloping bridge, into collision with an omnibus, being driven in the opposite direction. The plaintiff alleged that the accident was caused through the negligence of the defendants' servants, in lighting a fire, the smoke from which blew across the road and obscured the view of the drivers of the two colliding vehicles. In his direction to the jury, the Lord Chief Justice said that "It would be a hard doctrine to hold that no one should be

allowed to burn rubbish on their own property, and he knew of no rule of law that rubbish should only be burned when the wind was not blowing across an adjoining roadway. The wind had a habit of changing its direction from time to time, and one could not expect people to keep shifting their rubbish about according to the direction of the wind."

These dicta of the Lord Chief Justice are not, however, to be construed as meaning that an owner or occupier of land can in no circumstances be liable for smoke caused by burning on his land. *Sic utere tuo ut alienum non lædas* is a well-known maxim of our law, and there might be circumstances in which the repeated production of smoke might be a private or even a public nuisance. In the case of a private nuisance, however, it would be only the owners or occupiers of adjoining land who might be entitled to sue, but this remedy would not be open to a member of the public, whose use of the highway alone was merely affected. In the latter case, the proper remedy would be by indictment. In *Haywood* v. *L & N.E.R. Co.*, of course, the action was founded, not on the nuisance, but on alleged negligence, and from the direction of the Lord Chief Justice to the jury, the inference is probably to be drawn that, unless they are unusual and exceptional circumstances, no action for negligence will lie in such a case.

### *Cujus est solum, ejus est usque ad cœlum.*

THE CHIEF interest in the judgment of Mr. Justice ROMER in *Gifford and Another* v. *Dent* (Times, 30th ult.) centres round the fact that the learned judge in deciding the case applied the principle of *Cujus est solum, ejus est usque ad cœlum.* The plaintiff was the tenant of the ground floor and the basement of certain premises, the basement extending beyond the front of the house. Above the basement was a stone covering, somewhat higher than the adjoining pavement, and extending between the shop front and the pavement. The defendant was the tenant of a front room on the first floor of the same premises and had erected and fixed to the front wall an illuminated sign. This sign was 20 feet high and projected about 4 feet 8 inches from the wall. The plaintiffs brought an action against the defendant claiming an injunction to restrain the defendant from permitting the sign to remain erected and fixed to the wall, and they based their claim on two grounds, viz., breach of covenant and trespass upon the forecourt (i.e., the stone covering, referred to above). Mr. Justice ROMER held, *inter alia*, that the demise to the plaintiffs included a demise of the forecourt and that inasmuch as the sign projected over the forecourt the defendant was guilty of a trespass. It is a maxim of our law that a grant of land will pass, in the absence of a reservation to the contrary, not only the surface of the land, with such buildings, etc., as there may be thereon, but also all the soil beneath and the space above. This principle still obtains, notwithstanding that no mention of the space above is made in the definition of land in s. 205 (ix) of the Law of Property Act, 1925. In this connexion it might be as well to note the provisions of the Air Navigation Act, 1920, whereby no trespass will be committed by a person who flies over another person's land, if certain conditions are observed. In return for this exemption from liability for trespass, that Act imposes an absolute obligation on the owners of aircraft, for damage caused while flying over the land of a third person.

### *Forum non Conveniens.*

WHAT IS the precise meaning and effect of the plea *Forum non conveniens*? Apparently, for the first time in a mercantile case the House of Lords had to consider this in the Scottish appeal of *La Société du Gaz de Paris* v. *La Société Anonyme de Navigation Les Armateurs Français*, 1926, S.C. (H.L.) 13. The plaintiffs, nominally a French manufacturing firm, but in reality certain English underwriters who had been subrogated to their rights, sued the defendants, a firm of French shipowners, against whom, under Scottish procedure, arrestments *ad fundandam jurisdictionem* had been used, in the Sheriff Court at Dumbarton claiming damages alleged to have been sustained by them through the loss at sea of the defendants' ship while carrying the plaintiffs' cargo, and which, it was alleged, was unseaworthy. The defendants denied the plaintiffs' allegations, and also pleaded *Forum non conveniens*. Admittedly, there was not one Scottish fact in the case except the bringing of the action in Scotland. As Lord SHAW said, "everything to be proved was outside of Scotland; the parties were outside of Scotland; the contract was outside of Scotland; the circumstances to be proved were, one set in France, and the other in England," and in those circumstances the Court of Session, and now the House of Lords, had no difficulty in sustaining the defendants' plea of *Forum non conveniens*, because, although the action could be tried in Scotland, it was more appropriate that it should be tried in France. But the main interest of the case, from the legal point of view, lies in the discussion of the principle underlying the plea. Lord DUNEDIN took exception to the common rendering of the word "*conveniens*" into the English "convenient"; in his view the apt translation is "appropriate." Then comes the question: appropriate for whom or for what? In some earlier Scottish cases various tests had been laid down by which the court should be guided in deciding whether or not to give effect to the plea. It has been variously put, is it "for the interests of all the parties, and for the ends of justice," or "more convenient for all the parties and more suitable for the ends of justice," or "more convenient and preferable for securing the ends of justice" that effect should be given to the plea? Discussing these various formulæ, Lord SUMNER pointed out that the convenience of the plaintiff or the defendant or the court is of little, if any, importance, and that the true meaning of the doctrine is arrived at if the test of the appropriate forum is put thus: "more convenient, that is to say, preferable for securing the ends of justice." The object, as he proceeded to say, is "to find that *forum* which is the more suitable for the ends of justice, and is preferable because pursuit of the litigation in that *forum* is more likely to secure those ends."

### **Arrestment** *ad fundandam jurisdictionem.*

THE RIGHT under which the Scottish Courts obtained jurisdiction to entertain the case discussed in the foregoing note, was by arrestment of movables belonging to the defendants in Scotland. In fact, the plaintiffs arrested a vessel belonging to the defendants—not the one on which the cargo was loaded and which was alleged by the plaintiffs to have been unseaworthy—which happened to be in Scottish waters. The subject of arrestment to found jurisdiction is learnedly discussed in the new volume of the "Encyclopædia of the Laws of Scotland," where the following extract from the judgment of the Court of Session in *Cameron* v. *Chapman*, 16 Shaw 907, 918, is set out: "It is not necessary to inquire on what principle the custom is founded of arresting movables to found jurisdiction against their owner, being a foreigner. It is plainly in opposition to the general doctrine both of the Roman law and modern jurisprudence, both of which admit the maxim '*actor sequitur forum rei.*' It was borrowed in Scotland from the law of Holland, where, as VOET observes, it had been introduced contrary to principle, from views of expediency, and for the encouragement of commerce." In the case already discussed, which came recently before the House of Lords, one of the judges of the Court of Session also attributed the origin of the practice which is now well established in Scotland of arresting goods there to found jurisdiction against their foreign owner, "to the policy of encouraging the commerce of the country," an explanation which Lord SUMNER appears to have thought resembled that of VOLTAIRE when he said that the English shot BYNG "*pour encourager les autres*," for, as he shrewdly observed, "I hardly expect that the visits of the ships of the Société de Navigation Les Armateurs Français to the Clyde are likely to be so frequent as they otherwise might have been since this procedure has become familiar to their owners." Obviously, Lord SUMNER does not think highly of the doctrine.

# Trade Unions and the Law: their History and Present Position.

IV.

By E. P. HEWITT, K.C., LL.D.

(*Continued from p.* 1190.)

Section 4 of the Trades Disputes Act, 1906, is a section which has raised a vast amount of controversy, the objection taken being that the section places—so it is alleged—Trade Unions above the law, and enables them to commit torts with impunity. The expression "above the law," in this connexion, is loose and leads to confusion. Mr. CLYNES, for example, in the recent correspondence upon this subject in *The Times*, has argued more than once that the Trade Unions cannot be above the law, as they only do what the law allows. What is meant, however, by those who use the expression is, that the Legislature has given special privileges to Trade Unions, by means of which they escape liabilities to which, but for such privileges, they would be subject. The question raised by Sir HENRY SLESSER whether Trade Unions are legal entities, or are, in law, upon the same footing as clubs and other similar associations, has been dealt with in my article in last week's issue of THE SOLICITORS' JOURNAL.

Section 4 (1) of the Act of 1906 is as follows :—

> "An action against a Trade Union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the Trade Union, in respect of any tortious act alleged to have been committed by or on behalf of the Trade Union, shall not be entertained by any court."

The short effect of this provision is to exempt Trade Unions, as such—whether registered or unregistered, and whether a Trade Union is sued in its own name or in the form of a representative action—from liability for torts, alleged to have been committed by them or their agents. It will be observed that the words "in contemplation or furtherance of a trade dispute," which appear in sects. (1), (2) and (3), and in s-s. (2) of s. 4, are not present in s-s. (1) of s. 4. It has, accordingly, been settled that the protection given by s. 4 (1) is not limited to acts done in contemplation or furtherance of a trade dispute : *Vacher & Sons* v. *London Society of Compositors*, 1912, 3 K.B. 547 ; 1913, A.C. 107. The words "in contemplation or furtherance of a trade dispute," in the sections where they occur, mean that "either a dispute is imminent and the act is done in expectation of and with a view to it, or that the dispute is already existing and the act is done in support of one side to it. In either case the act must be genuinely done as described, and the dispute must be a real thing imminent or existing" (per Lord LOREBURN, L.C., in *Conway* v. *Wade*, 1909, A.C., p. 512).

*Vacher's Case* was an action for conspiracy and libel, the defendants being the London Society of Compositors (a registered Trade Union) and Naylor and Holmes, the secretary and the organising secretary of the society. Although the acts complained of were not done in contemplation or furtherance of a trade dispute, the name of the society was ordered to be struck out of the writ and the subsequent proceedings, upon the ground that the statement of claim—by reason of s. 4 (1) of the Act of 1906—disclosed no cause of action against the society. It was argued for the plaintiffs that reading the Trade Disputes Act, 1906, as a whole, and having regard in particular to the wording of s-s. (2) of s. 4, the tortious acts to which s-s. (1) refers are confined to such acts when committed in contemplation or furtherance of a trade dispute. But this contention was rejected, s-s. (1) of s. 4 being independent of s-s. (2), which is as follows :—

> "(2) Nothing in this section shall affect the liability of the trustees of a Trade Union to be sued in the events provided for by the Trades Union Act, 1871, section 9, except in respect of any tortious act committed by or on behalf of the Union in contemplation or in furtherance of a trade dispute."

Upon this section, Lord HALDANE, in *Vacher's Case*, said : "I find no context in the Act read as a whole which indicates an intention to cut down the wide language of s. 4, s-s. (1)," and he saw no justification for importing words from s-s. (2) into s-s. (1).

And Lord ATKINSON said : "They (the Legislature) have used plain, clear, and unambiguous language . . . and I do not think it is necessary to qualify that language to bring the sub-section into harmony with the sections which have preceded it."

There has been some conflict of opinion as to the true meaning of s. 4 (2) of the Act of 1906, read with s. 9 of the Act of 1871, which latter section, it will be recollected, provides that the trustees of a registered Trade Union may bring or defend actions "touching or concerning the property, right, or claim to property of the Trade Union." In Lord MACNAGHTEN'S judgment in *Vacher's Case*, he said :—

> "It is not easy to see the object of s-s. (2) of s. 4 or to understand its precise meaning. It seems to me that it will be better to leave the construction of that sub-section to be determined when it comes directly in question, if ever that occasion should occur. However it may be construed, it cannot, I think, affect the plain meaning of s-s. (1)."

Lord DARLING in a recent letter to *The Times*, in which he criticised Mr. CLYNES' contention that Trade Unions are not above the law, referred to s. 4 (2) of the Act of 1906, and after quoting from Lord HALDANE'S judgment in *Vacher's Case*, proceeded—

> "Thus it is clear that in respect of a tortious act, *such as the publication of a libel* [my italics] no action will lie against a Trade Union as such in any circumstances whatever, but in respect of the same act, the same legal wrong, an action may lie against the trustees of that Union, unless the act were done in contemplation or furtherance of a trade dispute."

And MATTHEW, J., in *Linaker* v. *Pilcher*, 84 L.T., p. 426, expressed the view that "property" in s. 9 of the Act of 1871 means property generally, and that "an action to add to the assets of the society, e.g., an action for breach of contract, would be an action 'touching or concerning' the property of the Union. So an action that threatened the assets of the society by a claim for damages, as in this case, would be an action that touched and concerned the property of the society."

According to the views thus expressed by Lord DARLING and Mr. Justice MATTHEW, s-s. (2) applies to libel and other torts, whether connected with property or not, and the result would be equivalent to importing into s-s. (1) the qualifying words "in contemplation or furtherance of a trade dispute," which appear in s-s. (2)—a result directly opposed to the decision of the House of Lords in *Vacher's Case*. It would be open to any plaintiff claiming damages for tort to sue a Trade Union through its trustees and to obtain payment out of the Union's funds, unless it were shown that the act was done in contemplation or furtherance of a trade dispute. In *Linaker* v. *Pilcher*, the expression of the learned judge's view was not necessary for his decision ; since the action was based on a libel published in a newspaper belonging to the Trade Union, and the action might therefore be said to touch or concern property (i.e., the newspaper) of the Trade Union. The true construction of s. 4 (2) would seem to be that stated by FARWELL, L.J., in *Vacher's Case* (1912, 3 K.B., p. 560)—

> "Section 4 (1) does not contain the words (in contemplation or furtherance of a trade dispute), but s-s. (2) does, and is somewhat remarkable. It first preserves the liability of the trustees to be sued in the events provided for by s. 9 of the Trade Union Act, 1871. *But this liability is confined to actions in respect of property and does not extend to actions of tort apart from property ; for example, actions for obstructing*

*ancient lights or for nuisance to their neighbour's premises would lie against them, but libel would not*" [my italics].

And Lord MOULTON, in the same case (1913, A.C., p. 129) said—

"To my mind, as a matter of construction, the fact that s-s. (1) speaks of tortious acts generally, and s-s. (2) speaks only of a certain class of tortious acts, creates a contrast between the two sub-sections which emphasises the generality of the one and the limited character of the other."

Section 5 (3) of the Act of 1906 defines the expression "trade dispute" as—

"any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour of any person, and the expression 'workmen' means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises."

After the Act of 1906 the question arose whether the funds of a Trade Union could be used for political purposes, such as maintaining members of Parliament or paying election expenses; and in *Osborne* v. *Amalgamated Society of Railway Servants*, 1910, A.C. 87, it was held that such action on the part of Trade Unions was unauthorised and *ultra vires*. In the Court of Appeal, COZENS-HARDY, M.R., said—

"In my opinion, it is not competent to a Trade Union, either originally to insert in its objects, or by amendment to add to its objects, something so wholly distinct from the objects contemplated by the Trade Union Acts as a provision to secure Parliamentary representation."

And Lord MACNAGHTEN, in the House of Lords, said—

"It is a broad and general principle that companies incorporated by statute for special purposes, and societies, whether incorporated or not, which owe their constitution and status to an Act of Parliament, having their objects and powers defined thereby, cannot apply their funds to any purpose foreign to the purposes for which they were established, or embark on any undertaking in which they were not intended by Parliament to be concerned . . . It can hardly be contended that a political organisation is not a thing very different from a combination for trade purposes."

This decision led to the passing of the Trade Union Act, 1913, which authorised Trade Unions to include among their objects, political objects, and to make a levy in furtherance of the same; but upon the conditions and subject to the qualifications in the Act contained.

(*To be continued.*)

# Some Points of Highway Law.

V.

BY ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from page* 1189.)

LIABILITY TO REPAIR RATIONE TENURÆ.

It has already been pointed out that at common law a parish can only escape liability to repair by proving that some other person or body is liable to repair. Such a liability may arise by prescription, or *ratione tenuræ* or *ratione clausuræ*. Such liabilities require a little explanation: Liability to repair *ratione tenuræ* is one which may be imposed upon an individual by reason of his tenure of certain lands. Generally speaking, such lands are those adjoining the highway, but this is not necessary. The liability to repair must be immemorial and it may be negatived by showing that it originated within legal memory. In the words of WILLS, J., in *Ferrand* v. *Bingley U.D.C.*, 1903, 2 K.B., at p. 451: "In the strict sense of the term the liability *ratione tenuræ*, unless arising from a grant by the Crown, must have its origin in a grant prior to the statute Quia Emptores (18 Ed. I)." A grant subsequent to that statute may, however, be presumed from the circumstances of a particular case: see *Esher and Ditton U.D.C.* v. *Marks*, 71 L.J., K.B. 309. This liability is usually proved by evidence that repairs have been done to the road in question by the owner and his predecessors in title, although the fact that such repairs were done is not conclusive evidence of liability. In the case of *Rundle* v. *Hearle*, 1898, 2 Q.B., at p. 90, Lord RUSSELL, C.J., said that the evidence was "quite consistent with such small repairs as were done having been done by the occupier for his own benefit. They were done on his own land. It is not as if they had been done outside his own land, or as if he had done the repairs under threat of legal proceedings, or had admitted that in doing them he was discharging a legal obligation." And he quoted with approval the words of an earlier case: "An adjoining occupier occasionally doing repairs for his own convenience to go and come, is no more like that sort of repair which makes a man liable *ratione tenuræ* than the repair by an individual of a road close to his door is to the repair of the road outside his gate." It is, of course, in every case a question of fact whether the repairs relied upon as evidence of liability were done pursuant to that liability or were done by the landowner for his own convenience.

LIABILITY TO REPAIR RATIONE CLAUSURÆ.

Liability to repair *ratione clausuræ* arises in this way: Where the highway is unenclosed and the public have acquired a right to deviate on to such land when the way is impassable, if the owner encloses his land by a fence he or his tenant becomes liable *ratione clausuræ* to repair the highway. If he owns the land and erects fences on both sides he is liable to repair the whole width of the road, but if he erects a fence on one side only he is liable to repair half the width of the road. The subject of liability to repair *ratione clausuræ* was fully considered in *Reg.* v. *Ramsdon*, E.B. & E. 949.

It must not be assumed, however, that such liability arises in every case in which the owner of adjoining land has enclosed it from the highway. In the case last referred to it was held that the liability does not arise where either the highway is not immemorial or where the adjoining land enclosed has not, before the enclosure, been used for passage. As already stated, the liability arises only where the public have acquired a right to deviate on to the adjoining land when the way itself is impassable. It is only necessary to add that the liability *ratione tenuræ*, and that, *ratione clausuræ*, must be enforced in proceedings against the occupier, not against the owner as such, although the occupier may be entitled to be reimbursed by the owner: see *Baker* v. *Greenhill*, 3 Q.B. 148.

(*To be continued.*)

# What is a "Public School" for Purpose of Income Tax Act?

(*Continued from page* 1191.)

Another test appears to be afforded by the case of *The General Committee for Ackworth School* v. *Betts* (*Surveyor of Taxes*), 1915, 6 Tax Cas. 642, viz., that in order to be a public school, the school must not be intended to be one open wholly or even primarily for a small and particular class of persons. In the above case, Ackworth School had been founded over a century ago by the Society of Friends, the object with which it was founded being to give the children of members of the society, who were not in affluent circumstances, a sound education, embracing at the same time a training in religious principles as professed by the society. The school was reserved primarily for the children of members of the society, or of persons closely connected with the society, though when the school was not full it was open to other children as well. The school, moreover, was entirely under the management of a

committee constituted from among the members of the society. The school owned a considerable amount of land and buildings which had been purchased out of sums subscribed for the benefit of the school, and as regards working expenses, the school was practically self-supporting. No profit, moreover, was made or was intended to be made out of the school. It was held, nevertheless, that the school was not a "public school." The *ratio decidendi* of this case is to be found in the following passage from Mr. Justice ROWLATT's judgment: "It seems to me," said the learned judge (*ib.*, at p. 658), "that the persons who founded this school wanted to avoid having a public school, they wanted to have a school which they should keep particularly under their own control, not with a view to any religious teaching which should be narrow in a theological sense, but to that half-theological and half-moral atmosphere for which the Society of Friends is well known and which everyone respects very much. They wanted to have an institution which should be kept in their own hands so as to promote that sort of exclusiveness. . . . On the whole I come to the conclusion that this is a school which is not intended to, and does not exhibit, the characteristics of a public school. I do not think it is meant to follow the lines which the ordinary public follow in the matter of schools, I think it is meant to be a peculiar school, peculiar in management, and peculiar practically in its composition."

Reference, again, may be made to *Cardinal Vaughan Memorial School* v. *Ryall*, 1920, 7 Tax Cas. 611. The school in question in this case was a comparatively small school, with buildings which were not extensive, and consisting of about seventy scholars. The trust deed of the school provided, *inter alia*, that the control and management of the school should be vested in *bonâ fide* members of the Roman Catholic Church, and that the religious doctrines and practices to be observed in the school should accord with the principles and discipline of the Roman Catholic Church. It should be noted, however, that in no case had admission been refused to non-Catholics, although the proportion of scholars who did not in fact belong to the Roman Catholic faith was in fact negligible. As regards the income of the school, by far the major portion of such income was derived from fees, and the balance from endowment and other sources.

The Commissioners considered that the school was not a public school, because it was denominational. On appeal, by way of case stated, ROWLATT, J., held, nevertheless, distinguishing *Ackworth School* v. *Betts*, *supra*, that the school was a public school. In his judgment ROWLATT, J., said (*ib.*, at p. 619): "Now the Commissioners seem to have said that it was not a public school because they said it was denominational. Now to some extent it was denominational, I dare say, to a pretty large extent, because the feeling in the Roman Catholic community is undoubtedly a keen and zealous feeling. But . . . that does not really conclude the matter. I think if you have got a school for the benefit of a denomination, providing it was not something absolutely, I was going to say ridiculous—I do not speak offensively—but some very small denomination which did not really number any large number of adherents among the human race, any denomination which appealed to mankind, I should have thought that that would be a public school. I do not think that the word 'public' is to be measured by the number of people at all that are in the denomination, or the class for which the benefit is intended. I do not think it is material to say that there are five per cent. of Roman Catholics as against so many per cent. of Quakers, and so on. I do not think it is the mere numbers that matter . . . I think, if there were a school for lepers, as unfortunately there may be lepers, coming from anywhere all over the place, you would call that a public school . . . Nor does religion enter into it. Here you have a public school primarily intended for a very large section, a very considerable section, of the community who may come from any part of the community, and do come from any part of the community; they are not co-extensive in the sense that they are numerous, but are co-extensive so far as extension is concerned with the whole community . . ." Mr. Justice ROWLATT further distinguished the judgment he delivered in *Ackworth School* v. *Betts*, *supra*. "I did not intend," said the learned judge, "to decide that case because it was denominational in the sense that it was for Quakers, but what I did think was present there was—and the whole point was—that these people did not want the school to be identified with even the Quakers throughout the community; they wanted to keep it . . . *essentially private, essentially domestic*—'peculiar,' I said, 'particular,' the Solicitor-General says—*but essentially private, essentially apart from the current national life.*"

It should be observed, further, that ROWLATT, J., was of opinion, in the *Cardinal Vaughan Memorial School Case*, that the fact that the school was a small school, and that the trustees had the power of letting the school buildings, instead of using them for the purposes of a school, but which in fact they had not done, did not prevent the school from being a public school.

To return now to the *Birkenhead School Case*, *supra*. In arriving at the conclusion that the school was not a "public" school, Mr. Justice ROWLATT appears to have relied on the fact that *the foundation of the school was not of a permanent character*, so that the element of permanence, which was part of the essence of a public school, was lacking. The continuance of the existence of the school, the learned judge pointed out, was dependent on the corporate will of the members of the company, and the case was really one of a company running a school, without paying dividends, but which was liable to be wound up at any time.

## Concealment of Material Facts Vitiating Policy.

THE DECISION of the House of Lords in *Glicksman* v. *Lancashire and General Assurance Co., Ltd., The Times*, 5th ult., decides a point of extreme importance affecting insurance law. The short facts in that case were that a proposal of burglary insurance was made by two persons trading in partnership, one of whom had been refused a burglary insurance by another insurance company, while carrying on the same business, upon the same premises, but without a partner. The proposal form contained the usual proviso that the statements of the proposers were true in all respects and that the policy should be void in the event of its having been obtained through any misrepresentation, suppression, concealment or untrue averment whatsoever. A policy was duly issued by the company to the two partners, but later, on a claim being made, the insurance company purported to repudiate the policy, on the ground that false answers had been given to certain questions in the proposal form, and also on the ground of suppression or concealment of material facts. The relevant questions and answers were as follows: "7. Have you previously been insured against burglary? If so, give name of company. Answer: No. 8. Has any company declined to accept or refused to renew your burglary insurance? If so, state name of company. Answer: Yorkshire accept, but proposers refused on account of fire proposal."

The expression "your" (in question 8), when used in a question addressed to more than one person, is ambiguous. Thus question 8 above might either refer to a proposal previously made by both the partners or to a proposal made by either of them. If the former meaning were adopted, the answer to question 8 would have to be regarded as correct, but if the latter meaning were adopted, the answer would have to be regarded as untrue. In the Court of Appeal (1925, 2 K.B. 601), while BANKES, L.J., expressed no opinion on this point, SCRUTTON, L.J., and SARGANT, L.J., took the

view that there was evidence to support the finding that the answer to the question was false. The decision of the Court of Appeal and of the House of Lords, however, is based on the independent ground that there was in the circumstances a suppression or concealment of material facts. In his judgment in the House of Lords, Viscount DUNEDIN said that: "The law on the subject had often been stated. The contract of insurance was a contract *uberrimæ fidei*. It was possible for insurance companies to stipulate that the answers to certain questions in the proposal form should be the basis of the insurance, and then no question could arise as to materiality. But apart from that, a duty lay on the applicant not to conceal any consideration which could affect the mind of a man of ordinary prudence in accepting the risk." As to the concealment, while expressing doubts on the question of materiality, Lord DUNEDIN was nevertheless of opinion that the fact that such a question as question 8 was put showed that the insurance company thought it material whether a proposal had been refused or not.

The decision of the House of Lords in this case may therefore be regarded as an authority for the proposition that where a policy is entered into by a number of persons, trading in partnership, the fact that a proposal for insurance of a similar kind by one of such persons, when trading separately, has been previously refused by an insurance company, is a material fact which must be disclosed by the partners, at any rate where it is shown by the questions inserted in the proposal form that the insurance company is treating a refusal to insure by another company as material, and that non-disclosure of such a fact is accordingly, in such circumstances, a ground on which the insurance company might avoid the policy, quite independently of any clause in the proposal form or in the policy making the truth of the statements and answers of the proposers the basis of the contract.

## The Matrimonial Domicil.

THOSE who have disliked the rule that a wife must seek her divorce in the courts of the country where her husband is domiciled, will find their conclusive argument in the case of *Cheylesmore* v. *Cheylesmore*. There is nothing new in the considered judgment of Lord MERRIVALE; but the facts of the case are a dramatic illustration of the iniquities that can be wrought by the application of this rule. A peer and "a woman of a different rank in life" lived an unhappy married life upon a Canadian ranch.

The husband filed a statement of claim in the Supreme Court of Alberta, in a suit for divorce, and the wife filed her defence, disputing the jurisdiction. The wife then filed a petition for divorce in England, and the husband appeared under protest and denied that he was domiciled in England. It was ordered that an issue be tried on the question of domicil.

The commencement of a Canadian action by the husband and the commencement of an English action by the wife would never have come to pass if English law had adopted some means of fixing a person's domicil beyond doubt, and without any necessity of obtaining a decision of the English court on the question. So long as domicil is made to depend upon "*proved* intention to reside permanently in a certain country," so long will it be impossible for many a man to be quite certain of his own domicil unless he has a decision of the English court on which to rely. Only one consequence of that impossibility is now relevant—the hardship of not giving his wife some inexpensive and convenient means of knowing which *is* the court of the matrimonial domicil. In the present case the wife, in her attempt to disprove any change of her husband's domicil of origin, brings forward evidence of the domestic tragedy, which can only be relevant on the ground that "there is no act, no circumstance, in a man's life, however trivial it may be in itself, which ought to be left out of consideration in trying the question whether there was an intention to change the domicil." Evidence of this kind would seem not only to increase the hardship of the wife, but also to show that the proved intention of her husband is an unsatisfactory index of his domicil.

But the facts of this case do more; they demonstrate the opportunities which our rule seems to afford to those who wish to impede the course of justice. A contention was put forward by the wife that the husband and his mother had conspired to set up a pretended domicil in Alberta; the basis of the contention was the fact that a wife has narrower rights in matters of divorce in Alberta than in England. The contention was rejected by the judge, but, nevertheless, the impression cannot be restrained that these parties had found our rule a means of inflicting injury upon each other. And it would be interesting to know what consequences would have followed if the judge had found such a conspiracy to have existed in fact. Would it amount to a conspiracy to defeat the ends of justice?

Further, supposing that the husband had left England and settled in Canada and that his only reason for doing so was divorce; the case of *Drexel* v. *Drexel*, 1916, 1 Ch. 251, would compel us to hold him domiciled in Canada. Such cases are not so impossible as they appear; and it is a consequence of our rule and a consequence which is hardly in accord with the ends of justice, that a man domiciled in England may escape the English divorce law by becoming *domiciled*, for a little while and until he gets his divorce, in a country the divorce law of which is more favourable to himself.

A concluding doubt is raised by the remark of counsel, that "there is an arrangement that the Canadian suit, in view of this result, shall not be pressed forward." What would be the effect of the absence of such an arrangement? It would not be impossible for the husband to press his Canadian suit to judgment, and for the Supreme Court of Alberta to hold him domiciled there and not in England. Such an *inelegantia juris* seems a theoretical, if not a practical, consequence of our rule.

## A Conveyancer's Diary.

**Life Tenancy and Contingent Shares under the S.L.A., 1925.**

The case of *Re Bird: Watson* v. *Nunes*, reported *ante*, p. 1139, is one in which a plunge had to be made into the deeper intricacies of both the old and new law as to settlements, and, whether the result is right or wrong, the perplexities have by no means vanished. The will considered in the case was neither unusual nor intricate, and the portion of it in question was a gift to trustees of the capital and income of realty, after the death of a tenant for life who died in 1918, to his children, who being sons should attain the age of twenty-one years. One son had attained that age, the other two were still minors. Part of the estate was also subject to annuities bequeathed by the testator, but, by the exercise of a power of appropriation, part had been freed. The judge held, following *Re Stevens*, 1915, 1 Ch. 429, and distinguishing *Re Averill*, 1898, 1 Ch. 523, that the son who was of age was entitled to one-third only of the income. The distinction, following that of Sargant, J., in *Re Stevens*, is a nice example of the modification of a strict real estate rule, but need receive no further comment here. The crux under the new law arose from the desire to sell land settled by this will, both that subject to the annuities and free from them, and the consequent necessity of giving title.

If *Re Averill* had applied, the son *sui juris* would have been entitled to the whole income until his next brother attained twenty-one, and thus, being within s. 20 (1) (vi) of the S.L.A., 1925, could have sold as tenant for life by virtue of ss. 117 (1)

(xxviii) and 38 (i). But *Re Stevens* applying, he took one-third of the income only, the minors being entitled to contingent interests in the other two-thirds. In the circumstances Clauson, J., held (1) that the land subject to the annuities was settled land within s. 1 (1) (v), and (2), that the land not subject to the annuities came within s. 1 (1) (iii) of the Act, because the son who had attained twenty-one was a person of whom it was true to say that under the will the land was limited on trust for him for an estate in fee simple contingent on the happening of various events.

Possibly s. 1 (1) (iii) and s. 20 (1) (ii) may be regarded as inverse cases, the first applying, as here, to a person with a merely equitable present interest in the land, or no interest at all, who may at some future date and under some future contingency, however remote (as, actuarially, the death of two persons approaching twenty-one before that age would be), the second to a person presently entitled to the fee simple, yet liable to be divested on a future contingency, again however remote.

A difficulty of the case, however, is the learned judge's prefatory statement that "he would not decide whether the plaintiffs are trustees for sale of the unrealised residuary estate and the real estate which has been appropriated to meet the annuities." For, reading the present report, it would appear to follow that, having elected to decide that the land was settled land, the new s. 1 (7) of the Act, added by the L.P. (Amend.) A., 1926, makes it absolutely plain, if it was not so before, that land held upon trust for sale is not settled land, and *vice versâ*. He therefore appears to have decided, by implication at least, that the plaintiffs were not trustees for sale.

The report does not give the date when the eldest son attained twenty-one, but, if before 1926, he was entitled on 31st December, 1925, to at least one undivided third share of the land vested in fee simple in possession, and that undivided share was not settled. How then was the application of the L.P.A., 1st Sched., Pt. IV, para. 1 (1), precluded? If it is not precluded there appears to be a debatable ground, narrow perhaps but still existing, which might be claimed both under Pt. IV and the S.L.A., 1925. The survey of this ground in the above case appears to have led to a somewhat inconclusive result. It will be noted that, two of the beneficiaries being infants, the new para. 4 of Pt. IV, added by the amending Act, cannot apply.

## Landlord and Tenant Notebook.

(*Continued from p.* 1192.)

**Covenant not to Part with Possession.**

In *Jackson* v. *Simons*, 1923, 1 Ch. 373, the principle of *Peebles* v. *Crosthwaite, supra*, to the effect that there is no breach of a covenant not to part with possession, if the lessee allows other persons to use the premises, so long as he retains possession of the same himself, was applied. In this case the defendant was the lessee of a ground floor shop, and the lease contained a covenant not to assign, underlet or part with the demised premises or any part thereof, or part with, or share the possession or occupation thereof, or of any part thereof, without consent. The lessee carried on a tobacconist's business upon the premises in partnership with one of his brothers, to whom the management of the business was left exclusively. Below the shop was a basement used as a night club. The proprietors of the club entered into a verbal arrangement with the defendant's brother, whereby they were given, for a consideration, the right of selling tickets in the front part of the shop to persons desirous of entering the club. Soon after this arrangement had been entered into, a screen was constructed for the purpose of cutting off the front part of the shop in which the tickets were to be sold from the back part where the shop counter was situated. The screen was removable, but when it was once in position it could only be removed by unlocking a padlock, the key of which was retained by the defendant's brother. Access to the front of the shop was obtained by the proprietors of the night club by means of a key, with which they had been provided. It was admitted that the above facts constituted a sharing of possession, but not a parting with possession, that a sharing of possession did not come within the exceptions contained in s-s. (6) of s. 14 of the Conveyancing Act, 1881, and that as no preliminary notice had been served, as was required by s-s. (1) of s. 14 of the Conveyancing Act, 1881, the action was not maintainable. Romer, J., in a considered judgment, upheld all the contentions of the defendant, including, of course, the contention that the facts did not constitute a parting with possession. In his judgment Romer, J., said (*ib.*, at p. 380): "I now turn to a consideration of the question whether the arrangement made . . . and the acts done in pursuance of that arrangement constituted an underletting or a parting with the possession of a part of the demised premises. I have come to the conclusion that they did not. If the arrangement constituted an underletting it must have conferred . . . some estate or interest in land, and this, in my opinion, was not the effect of the arrangement. All that was conferred . . . was, as it seems to me, a mere privilege or licence to use a part of the demised premises . . . The *defendant, moreover, retained the legal possession of the whole of the premises at all material times*, and, as pointed out by Romer, J., in *Peebles* v. *Crosthwaite, supra*, a lessee who retains such possession does not commit a breach of a covenant against parting with possession by allowing other people to use the premises." In *Chaplin* v. *Smith* the Court of Appeal approved these *dicta*, as being a correct statement of the law (*cf.*, per Bankes, L.J., 1926, 1 K.B., at p. 206). Bankes, L.J., would appear to extend the application of the principle even further. Thus the learned Lord Justice says (*ib.*, at p. 207): "The lessee of a double-fronted shop with a door in the middle and counter on either side, who has covenanted not to part with possession of the demised premises or any part thereof, may surely agree to allow a licensee to carry on a business in one part while the lessee himself remains in possession of the whole premises and carries on his own business in the other part. In that case there is no parting with possession."

The test would appear to be, therefore, whether the lessee is in possession of the whole premises, and he may still be in such possession, notwithstanding the fact that his possession is not exclusive but shared with some other person, as, for instance, a licensee. The moment the tenant ceases himself to be in possession a breach will be committed. This distinction is brought out clearly by Lord Justice Bankes in *Chaplin* v. *Smith* (1926, 1 K.B., at p. 105). Thus the learned Lord Justice says: "The appellant retained the power to exercise real and effective possession of the premises. If, instead of retaining possession, he had gone abroad and left the management of the company and the control of the premises to some other officer of the company, the court might have been driven to a different conclusion."

Some of the arguments in the above cases to the effect that there is no parting with possession where a licence is merely given to another person to use the demised premises, appears to be based on the contention that a licence does not confer any interest whatsoever on the licensee. Whether or not any such interest is conferred on a licensee appears still to be a somewhat vexed question, and it is submitted that this consideration is an immaterial one, the crucial test being, in every case, whether or not the tenant can still be regarded as retaining legal possession of the demised premises.

# LAW OF PROPERTY ACTS.

## POINTS IN PRACTICE.

**Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.**

VENDOR AND PURCHASER—OFFICIAL SEARCHES—"SUB-VENDOR"—L.C.A., 1925, s. 10 (2).

572. *Q.* As you know, since the 1st January last official searches have become more than ever important, and I should be much obliged if you would let me know what searches you consider should be made by a purchaser against a sub-vendor (*i.e.*, a person who has only contracted to buy and is not the owner).

*A.* By the "sub-vendor" it is assumed is meant a purchaser who sells his interest before conveyance to him, and concurs with his vendor in a conveyance to his purchaser. In such case there is no moment in which he is estate owner, and therefore no land charge under the L.C.A., 1925, s. 10, can be registered against him to affect the land: see L.C.A., 1925, ss. 10 (2) and 20 (4), and L.P.A., 1925, s. 205 (1) (v).

Pending actions, including bankruptcy petitions, may, however, be registered against an "estate owner or other person," see s. 2 (1), (2) and (3), and a purchaser takes with notice of all registrations under the L.C.A., 1925, see L.P.A., 1925, s. 198.

It is nevertheless to be observed that a sub-vendor would have, at most, an equity against his vendor to require the latter to convey or create a legal estate in his favour upon payment of the consideration, and that that equity, at most, would pass to his trustee in bankruptcy on adjudication between contract and conveyance. Such an interest is dealt with as "an estate contract" in the L.P.A., 1925, s. 2 (5) (*d*): (see s. 2 (3) (iv)), and the L.C.A., 1925, s. 10 (1), Class C (iv).

The opinion is therefore here given that, in respect of a pre-1926 bankruptcy of a sub-vendor, his name on the conveyance to the sub-purchaser and in the list of bankrupts would give a purchaser notice of his trustee's possible estate contract within s. 2 (5) (*d*), and that therefore search should be made, unless, according to the practice (see "Williams V. & P.," 3rd ed., pp. 566-7) it was assumed that the sub-purchaser had satisfied himself that the sub-vendor was not bankrupt at the date of completion.

A post-1925 trustee in bankruptcy, however, would have to register his estate contract against the legal owner, so the search for it would not be in the bankrupt's name.

UNDIVIDED SHARE—INFANT—PRE-1926 PURCHASE BY—VESTING—TITLE.

573. *Q.* By his will, dated August, 1921, A.B., after making certain pecuniary bequests, devised certain freehold messuages and premises unto his trustees upon trust to sell the same and stand possessed of the proceeds, as to one equal half part thereof in trust for his granddaughter, M.N., absolutely, and as to the remaining one equal half part thereof in trust for another granddaughter, X.Y., on her attaining the age of twenty-one years. A.B. died in 1924 and his will was proved in the same year by the trustees. In the same year X.Y. purchased M.N.'s share, and by a conveyance made between M.N., of the first part, the trustees of the second part, and X.Y. of the third part, such half-share was conveyed and assigned by M.N. to X.Y. and the trustees and M.N. conveyed to X.Y. an undivided half-share of and in the said messuages and premises freed and discharged from the trusts of the said will. At the dates of the death of the testator and of the conveyance, X.Y. was an infant and only attained her majority in March, 1926. X.Y. now desires that the half-share to which she is entitled under the will should be conveyed to her in specie free from the trusts of the will so that the entirety of the said messuages will be vested in her in fee simple absolutely. I should be pleased if you would deal with the following points:—

(1) Did the said messuages become vested in the Public Trustee on the 1st January, 1926, and are the trustees and X.Y. the proper persons to appoint new trustees in place of the Public Trustee under the L.P.A., 1925?

(2) If so, on such appointment, as the entirety of the said messuages will vest in the new trustees, can the statutory trusts be released by them and X.Y. (X.Y. being entitled to the whole beneficial interest) and the property conveyed by them to X.Y. free from the statutory trusts?

(3) In such release and conveyance to X.Y. could the trustees of the will also join, and release the original moiety to which X.Y. is entitled under the will from the trusts of such will, and should M.N. also join in the deed in order to confirm the conveyance to X.Y.?

(4) Is there any objection to the trustees of the will being appointed the new trustees under the Act, and could the whole transaction be carried out by one deed?

(5) A reference to any precedents will be appreciated.

*A.* Assuming that the trustees joined in the conveyance by M.N. and X.Y. to convey the legal estate in M.N.'s share to X.Y., the opinion here given is that their conveyance was not a nullity (as it would now be under s. 1 (6) of the L.P.A., 1925), but operated to pass the legal estate of the undivided moiety to X.Y. in fee, although a breach of trust (for there could be no election to re-convert until X.Y. was of age, and therefore the trustees should have held or sold) and although the latter might possibly have repudiated the transaction on coming of age, or before: see *O'Shanessy* v. *Joachim*, 1876, 1 A.C. 82; *Nottingham Permanent B.B.S.* v. *Thurstan*, 1903, A.C. 6; and *N.W. Railway Co.* v. *McMichael*, 1905, 5 Ex. 114, at p. 120. Thus, on 31st December the legal estate in an undivided moiety was vested in X.Y. and in the other in the trustees upon trust for sale. This being so, the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4), operated to vest the legal estate in the whole in the Public Trustee upon trust for sale (Pt. III of the schedule not being applicable, because, "land" by definition not including an undivided share of land, see s. 205 (1) (ix), the infant did not hold the legal estate in land within the Act). X.Y. being now of age and affirming her purchase, is entitled to the whole beneficial interest and should therefore divest the Public

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QUESTION 554.

[The answer to this question has, after further consideration and much discussion, been amended as follows: Assuming the testator's estate was fully administered the property was held on the 31st December, 1925, by persons entitled in succession. During the life or widowhood of the widow, the widow and the five daughters were entitled in undivided shares and thereafter the trustees would hold upon trust for sale. Hence the land was immediately before the commencement of the L.P.A., 1925, settled land, and there were two or more tenants for life of full age entitled in undivided shares, and the entirety of the land is limited to devolve together after cesser of the widow and daughters' interests. Hence L.P.A., 1925, 1st Sched., Pt. IV, para. 4 (a new paragraph introduced by the Amending Act of 1926) applies, and the widow and surviving daughters and the representatives of the deceased daughter are jointly tenants for life. A vesting deed must be executed before the land can be dealt with. The trustees of the will will be S.L.A. trustees.]

Trustee and appoint herself under Pt. IV, para. 1 (4) (iii), of the schedule, which she can do without the concurrence of the will trustees. The recitals to the appointment would show she was fully entitled and can therefore at once give good title to a purchaser: see answer to *Q.* 244, p. 541.

The questions specifically put are not answered seriatim, for they contemplate a series of transactions to attain an end for which a simpler procedure is available and here suggested.

NEW PROPERTY ACTS.

574. *Q.* By deed of settlement dated 22nd February, 1906, A (a widow), in consideration of natural love and affection for her daughter B, granted certain freehold property to X and Y (trustees) without any words of limitation, to hold upon the trusts and subject to the powers and provisions which followed. The deed continued: "The Trustees shall if they think it desirable at any time with the consent in writing of A and after her decease at the discretion of the Trustees sell the property or any part thereof in such manner as they shall deem desirable and invest the proceeds (after paying certain mortgages on the property) in authorised investments with power from time to time with such consent or at such discretion as aforesaid to vary the said investments into or for others of the same or a like nature." The trustees were directed to pay an annuity to C during her life out of the income of the property or investments, and to pay the balance of the income to A, and after A's death to apply such balance for the maintenance and education of B, and on B's attaining twenty-one or marrying under that age to stand possessed of the property and investments in trust for B absolutely. A now proposes to sell part of the freehold property as tenant for life under the S.L.A., 1925, contending that the direction to sell constitutes merely a power and not a trust for sale, and that, notwithstanding the lack of words of limitation in the grant to the trustees, the fee simple is included in the settlement under s. 1 (4) of that Act. Is A's contention correct, or is the direction to sell a trust and not a power to sell?

*A.* The clause cited creates a trust for sale and not a power of sale: see *Re Tweedie & Miles*, 1884, 27 Ch. D. 315. The trust for sale, however, is only of an estate for the lives of X and Y. The result seems to be that the land stands limited to persons by way of succession and is therefore settled land, and A is the tenant for life: S.L.A., 1925, s. 20 (1) (viii); and the legal estate in fee simple is now vested in her under L.P.A., 1925, 1st Sched., Pt. II. There do not seem, however, to be any S.L.A. trustees to execute a vesting deed and give receipts; an application to the court for their appointment is therefore necessary, unless S.L.A., 1925, s. 30 (1) (v) applies. Another course might be to call upon A to execute a conveyance of further assurance to the trustees upon trust for sale. This would give them the necessary estate to sell.

SPECIAL EXECUTORS—PROBATE—VESTING ASSENT.

575. *Q.* A was the owner of a copyhold house, and at his death in 1923 was the tenant on the court rolls of the manor. By his will, made in 1919, he devised the copyhold house to his executors and trustees, upon trust to pay the income thereof to his wife, B, for life, and after her decease he devised the house to his daughter, C, absolutely. No admission on the court rolls was made, and A's name is still on the rolls. B survived A and died in March, 1926. No vesting deed was executed. A vesting assent was drawn up in September, 1926, by which the executors of A's will purported to assent to the vesting in C of the copyhold house, and such vesting assent was produced to and registered with the steward of the manor. C has now sold the house and his solicitor has delivered abstract as above. We, acting for the purchaser, have raised the point that the legal estate is outstanding in B, and that representation must be obtained to her estate when her representatives can assent to the vesting of the property in C. B has left a will but no estate. Are we correct in our contention?

*A.* Yes. Immediately after the commencement of the L.P.A., 1922, and the L.P.A., 1925, the land became enfranchised and the legal estate therein became vested in B as the tenant for life: L.P.A., 1922, s. 128 (1); L.P.A., 1925, 1st Sched., Pt. II, paras. 3, 5. On B's death, therefore, the land was settled land within the meaning of A.E.A., 1925, s. 22. The executors of A's will were the S.L.A. trustees: S.L.A., 1925, s. 30 (3); and so on B's death, in default of express appointment by her of A's trustees as her special executors, she is deemed to have appointed them. But the section does not cause the legal estate to vest in them. Therefore they are not in a position to make a vesting assent until they have obtained probate of B's will—limited, of course, to her settled land.

PURCHASE OF INTERESTS OF BENEFICIARIES BY EXECUTRIX.

576. *Q.* A testatrix by her will appointed her daughter sole executrix. She expressed a desire that this daughter should purchase, if she wished, by private treaty, her residence at a price not exceeding £X. The executrix wishes to purchase at this price. The executrix has three sisters, and the estate is divisible equally among the four. How should the property be vested in the executrix personally as purchaser? Is it necessary or advisable to join the beneficiaries? How should the acknowledgment of the purchase money be expressed?

*A.* A trustee (and for this purpose the executrix is in the position of a trustee) cannot buy the trust property from himself, but he can, if there is a full disclosure and there are certain other safeguards, buy his interest from a beneficiary. In the circumstances the executrix ought to buy their interests from the beneficiaries. The best course to follow is to adapt the precedent given in "Prideaux," Vol. I, p. 565, for the purpose in hand. If the "desire" expressed by the testatrix amounts to the giving of a right of pre-emption to the testatrix, the precedent on p. 568 of "K. & E.," Vol. I, is appropriate.

UNDIVIDED SHARES—MORTGAGE OF A SHARE—VESTING IN PUBLIC TRUSTEE—CUSTODY OF TITLE DEEDS OF ENTIRETY.

577. *Q.* S, a tenant in common, of an undivided moiety in freehold land mortgaged his share to H, prior to 1st January, 1926, H being handed the deeds relating to the entirety. Clearly, on the 1st January, 1926, the entirety free from incumbrances, affecting the undivided moiety vested in the Public Trustee upon the statutory trusts, and H's mortgage is turned into a charge upon the proceeds of sale. The Public Trustee has not been requested to act as provided by L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4) (i), and no appointment of new trustees in his place has been made, as provided by Pt. IV, para. 1, (4) (iii). It is now proposed to transfer H's mortgage to C, without joinders. What is H's position with regard to handing over to the transferee the deeds relating to the entirety along with his own mortgage? It is suggested in handbook of Sir B. Cherry's lectures, p. 122 (answer to *Q.* 12) that, in the absence of trustees appointed to displace the Public Trustee, H immediately after 31st December, 1925, should have handed the deeds (presumably relating to the entirety only) to the Public Trustee, and given him notice of his (H's) mortgage, but this has not been done.

(1) Should it have been done in the absence of a request to the Public Trustee to act?

(2) Could H, without liability, hand over the entirety deeds to the proposed transferees on the completion of the transfer, bearing in mind that the Public Trustee has not been requested to act? By s. 96 (2) L.P.A., and L.P. (Amend.) A., 1926, H is not liable for handing over the deeds to a person not having the best right unless he has express notice of a better right, but, of course, H is aware of the transitional provisions putting the legal estate in the entirety in the Public Trustee.

(3) Could H safely hand over the entirety deeds on an undertaking from the proposed transferees to deliver them to the Public Trustee or trustees appointed in his place?

*A.* It being clear that the mortgage only affects the S's moiety, the mortgagee has no right to hold the title deeds

to the entirety. He is a trustee thereof for the persons entitled thereto—in this case the Public Trustee as owner of the legal estate.

(2) H has notice that the Public Trustee is entitled to the title deeds; hence if he transfers them to anyone else he will not be protected by the provision referred to and will, in fact, be liable for any damage following his handing them over to any person other than the Public Trustee.

(3) It all depends on the practical value of the undertaking. The only unimpeachable course is to hand the documents over to the Public Trustee—the depositee of the legal estate. This will not, of course, be a request to him to act, but it may lead to that or to the appointment of new trustees.

# City of London Solicitors' Company

## LAW OF PROPERTY ACTS LECTURE

By Mr. F. C. WATMOUGH (Barrister-at-Law),

On Wednesday, 8th December, 1926.

(*Verbatim Report.*)

(*Continued from p.* 1200.)



There are some cases in which it certainly is not very clear at first sight whether the entirety is in a trustee or not. For instance, a property is conveyed to A in trust as to half for himself, and as to half for B. That is the way it is expressed. At first sight it seems clear that the land is in a trustee in trust for people in undivided shares; but it is not really so clear, because a man cannot hold property in trust for himself, and therefore he really owns one-half as beneficial owner and the other half in trust. That, at all events, is a possible view, and if that view is taken of the matter, the entirety would vest in the Public Trustee. But no difficulty need arise in a simple case of that sort, because if A is a sole trustee, you will certainly have to appoint an additional trustee; and if the land is vested in the Public Trustee you will want to appoint two trustees in place of the Public Trustee. Therefore, there is a simple way out of any difficulty. On the footing that the land is vested in A in trust for himself and someone else, A can appoint B, the other person, as the additional trustee. That would be done by A if and in so far as A was the trustee of the entirety; and A and B by the same deed can also appoint themselves as trustees in place of the Public Trustee if and in so far as the land is vested in the Public Trustee. In that way you cover both contingencies, and I should certainly advise that to be done in similar cases.

There are also such cases as this. A husband and wife purchase property as tenants in common, and the wife dies before the Act. The husband takes out administration. Possibly it was not a case where the husband was entitled to any interest in the wife's share at all. In those cases he holds half absolutely in his own right, and the other half as administrator, or it might be as executor, of his wife. In such cases it seems to me it vests in the Public Trustee, and the same procedure as above indicated should be applied in appointing trustees to make the title.

Where the property is vested in A in trust as to one-half for himself and the other half for trustees for sale, I think as at present advised it is probable that the same principle applies, and that you will have to appoint new trustees in place of the Public Trustee.

As I say, the addition of a few words to the deed in simple cases of that sort is all that is necessary. You can get out of the difficulty with perfect ease.

In dealing with undivided shares, there are other points which have arisen which have not been finally decided, and which I should like to refer to. Who are the people who can appoint new trustees in place of the Public Trustee? They must be, according to the Act, persons interested in more than a half of the land or of the income of the land. The question arises whether persons interested as trustees only can appoint? Are trustees for sale or executors "interested" within that clause? Or have you to get the beneficiaries? I do not think there is any real substantial doubt that trustees for sale or executors must be considered persons interested within that provision. The actual point was decided, on another sub-clause, namely, as to the meaning of persons "interested" under s-s. (11) of Pt. IV, which provides that persons interested in one-half can apply for a stay of proceedings in a partition action. It was there held that persons interested included trustees for sale, and I see no reason whatever why the words have not the same meaning in the other clause. The case is *Darlington* v. *Darlington*, p. 192 of the "Weekly Notes" of this year.

Again, the persons who can appoint are persons interested in more than half of the land or of the income of the land. Can, therefore, two tenants for life appoint? Where the whole of the shares are settled it might be a Settled Land Act case, and come within sub-clause (3). But supposing one share is unsettled, and the other two are settled, can the life tenants, as the owners of two-thirds of the income appoint trustees in place of the Public Trustee, and if so, can they appoint themselves? I think they can appoint, and I think the effect of the Act is that they can appoint themselves. That is my own view. Of course they ought not to appoint themselves in such a case; it would be a most improper thing to do. They ought to hold an even hand between the various persons interested, and either appoint an independent person or one of the remaindermen jointly with themselves if they wish to act. But in strict right I think they could appoint themselves alone.

Now, as we are dealing with undivided shares, I would suggest caution in making wills with regard to undivided shares in the proceeds of sale of freehold land. Sometimes the shares are extremely valuable, especially in the case of London property. The difficulty that arises is not very easy to put shortly, but it arises in this way.

Prior to the Act these shares were land. If therefore you devised a third share in a house to A and gave the residue of your property to someone else, the estate duty fell on A as the share was real property not passing to the executor as such. Now the interest which is devised by the will of the owner of the undivided share is an interest in money, not an interest in land. It is an interest in the proceeds of sale, and if he bequeathes that share specifically to one person, *primâ facie*, subject to the provisions I will mention in a moment, the duty would really fall ultimately on the residue. That is to say, it would be estate duty in respect of personal estate, and there being no provision in the Finance Acts throwing it on any specific property it would fall ultimately on the residuary legatees. And I have come across cases in which, if that happened, the entire residue would be eaten up. Whether or not that result in fact follows is not an easy question. It depends on the construction of ss. 16, 17 and 18 of the Law of Property Act, 1925, which I cannot possibly go into in detail as it would take too long, and I have not very much time left. But I think the effect of those sections is to make the duty in the first instance payable by the trustees for sale in whom the entirety is vested. The fifth sub-section of s. 16 leaves the liability ultimately to repay the duty on the people who become entitled to the undivided share. But whether that is the right construction or whether it is not, it is of importance at the present time, until these questions have been decided, to cover the point in making a will. You want to make it clear, if you are devising an undivided share, or disposing by will of any undivided share in the proceeds of land, whether the estate duty is to fall on that undivided share in the proceeds of sale, or whether it is to fall on the residue. And if wills have already been made relating to property of large value where undivided shares have been specifically given, it would be well to deal with the matter in a codicil,

because as I say it is possible, though I think not probable, that the sections might be construed to throw the duty on the residue.

There are other important questions arising in relation to the same matter. For instance, supposing undivided shares are given by will, the duty was formerly payable by instalments, because it was in respect of an interest in real estate. I think it will ultimately be settled that the duty may still be paid by the trustees for sale in instalments, but at the present time when you apply for a grant of probate and part of the estate consists of an undivided share in the proceeds of sale, the Inland Revenue, I am told, are insisting on payment of the estate duty by the executors. I venture to doubt the correctness of this practice.

I do not think that there is anything more I wish to say with regard to undivided shares. I will now conclude by making a few observations on the subject of devolution on death to executors and administrators, especially in the case of settled land.

*(To be continued.)*

*(Transcripts of the Shorthand Notes of* The Solicitors' Law Stationery Society, Limited, *104-7, Fetter Lane, E.C.4.*

# Correspondence.

## *Daphne* v. *Shaw*—Income Tax as applied to Legal Libraries.

Sir,—My attention has been called to the editorial note in the case of *Daphne* v. *Shaw*, on p. 1100 of your issue for 13th November, which appears on the face of it to have been a comment founded on the short report of the case in *The Times* newspaper for the 10th November, which gave no trace of the argument supporting my contention that the Law Library comes within the relief afforded by the Finance Act, 1925, to "plant and machinery" as applied to the legal profession, viz.:—That implements, tools of trade, plant and machinery, beasts of the plough and books have already been construed as terms interchangeable by reference to the business or profession using them under the common law Art. 47A of Coke upon Littleton, and cases decided thereunder by the common law judges.

I have no doubt, when the argument as well as the proposition and judgment is reported, this will become clear; and if I be looked upon as "a user of figurative language," or "a poet and a novelist with a wide stretch of imagination," I am astray, at any rate, in the good company of Lord Justice Coke.

In my view, the profession at large ought to urge upon their Law Societies the support of an appeal from the decision of Mr. Justice Rowlatt, as a matter of importance to every lawyer, for, if my contention be correct, the Finance Act, 1925, will not require the amendment you suggest to give the relief I sought.

London, E.C.2. F. J. Daphne.
9th December.

[I have now had the advantage of perusing the report of the arguments advanced by the appellant on his behalf. I must admit that the authorities which are cited do in fact give the expressions in question a much wider meaning than one would ordinarily expect them to have. The fact, however, that an extended meaning is given to a word for the purpose of one Act of Parliament (as, for example, the Employers' Liability Act), or for the purposes of one branch of the law (as, for example, the law of distress), does not justify one in giving an identical meaning to the same word for all other purposes as well. If one considers carefully, the provisions of s. 16 of the Finance Act, 1925, it appears more reasonable to hold that the expression "machinery or plant" when regarded according to the context, cannot possibly be meant to refer to such objects as the books forming the law library of a lawyer. It is highly desirable however that allowances should be made to lawyers in respect of the wear and tear and the obsolescence of their law books, but this result it seems cannot be achieved, as the law at present stands, except by the intervention of Parliament.—Your Contributor.]

## Parking Motors and the Law of Trespass.

Sir,—With reference to the paragraph under this heading, appearing in your issue of the 20th November, will you allow us, as the solicitors concerned, space for the following comments?

As to the law, we respectfully suggest that the paragraph is inaccurate technically, and may be misleading to the public practically. It is inaccurate because the words "he might have sued for damage in a civil action but he would have to prove injury" involve the proposition that damage is an essential ingredient in a cause of action for trespass, which is not good law. It may be misleading partly because it unduly minimises the risks of trespassing generally, and partly because the general statements made are quite inapplicable to the facts of the particular case to which the paragraph refers. A motorist who invades private property and declines to withdraw at request will be wise to bear in mind what the paragraph mentions, but only to put aside, namely—(*a*) that forcible removal of man and car by the landowner is lawful; (*b*) that if insult is added to trespass (as it has been), exemplary damages and costs will be awarded (*Merest* v. *Harvey*, 5 Taunton 442); and (*c*) that if a right is claimed, or a threat of repeated trespass is made (as it has been), an injunction and costs will be awarded (*Harrison* v. *Rutland*, 1893, 1 Q.B., at p. 154).

The facts of the case, to which the paragraph refers, are these:—The land in question is not a space by a roadside—in which connection it must be observed that the cases quoted, namely, *Harrison* v. *Rutland*, *Hickman* v. *Maisey*, and Lord Wrenbury's case of *Fielden* v. *Cox* (22 T.L.R. 411), are all cases of trespass on roads. The land is a broad tract over half a mile in length, vested in Mr. J. W. Chester's predecessors, by a private Act of Parliament, and sold by the court in recent years without special condition as unincumbered freehold. The land has been subjected not to casual trespass by an occasional car, but to a practice of parking by as many as 100 to 200 cars, and more, at a time. Regulation of such parking and of the insanitary conduct of some motorists has become a duty on the landowner. The shilling fee is demanded by an agent of the owner, carrying written credentials, and goes towards, but does not cover, the cost of regulation. Many car owners, including the man referred to in your paragraph, have declined to withdraw or to give their names and addresses. Three writs and no more have been issued, and in each case (including this case) only after two letters requiring an undertaking had been disregarded.

We have the honour to carry on a practice founded by Henry Chester, in 1783, and held solely by members of our family for four generations. We feel that before comment was made on our action in settling proceedings for which we were responsible, enquiry should have been made of us to ascertain the actual facts, which were very different to what the public has been asked to accept.

London, S.E.11. E. G. and J. W. Chester.
10th December.

[We are grateful to our correspondents for their explanation of the circumstances of a case which has been the subject of a considerable amount of discussion in legal circles.—Ed., *Sol. J.*]

## Books Received.

*Key & Elphinstone's Compendium of Precedents in Conveyancing.* 12th Edition. Vol. I, Part II. F. T. Maw, B.A., LL.B., and H. W. Renshaw, B.A., LL.B., assisted by Wilfrid Gutch, M.A. (Barristers-at-Law). 1926. Medium 8vo. pp. cliii and 1302 (with Index). Sweet & Maxwell, Ltd., Chancery-lane. £5 15s. 6d. net.

*Reports of the Departmental Committee on Co-Operative Selling in the Coal Mining Industry.* 1926. Cmd. 2770. Medium 8vo. 57 pp. H.M. Stationery Office. 1s. 6d. net.

*The Journal of Comparative Legislation and International Law.* Edited for the Society of Comparative Legislation by Sir Maurice Sheldon Amos, K.B.E., and Mr. F. P. Walton, K.C. (Quebec), LL.D. Third Series. Vol. VIII., Part IV. November, 1926. Medium 8vo. pp. iv and 319. The Society of Comparative Legislation, 1 Elm-court, Temple, E.C., 6s. net.

*A Compendium on The Law of Torts, specially adapted for the use of Students.* The Hon. Sir Hugh Fraser, one of His Majesty's Judges. 11th Edition. 1926. Roland Burrows, M.A., LL.D., Barrister-at-Law (Reader in Evidence, Procedure and Criminal Law in the Inns of Court, Recorder of Chichester). Crown 8vo. pp. xxxvi and 300 (with Index). Sweet & Maxwell, Ltd., Chancery-lane. 12s. 6d. net.

*Statement showing the number of Persons in Receipt of Poor-law Relief in England and Wales,* in the quarter ending September, 1926, with some particulars as to the number of "Unemployed" Persons in receipt of such Relief. Medium 8vo. 17 pp. H.M. Stationery Office. 3d. net.

*The Irish Law Times and Solicitors' Journal, with Law Reports and the Public General Statutes.* Saturday, 11th December, 1926. Vol. LX, No. 3124. John Falconer, 53, Upper Sackville-street, Dublin. 1s. net.

*The Rating and Valuation Act,* 1925. First Series of Representations received by the Minister of Health from the Central Valuation Committee (constituted under s. 57 of the Act for the purpose of Promoting Uniformity of Valuation for Local Rates), and circulated by the Minister to Local Authorities. Medium 8vo. 27 pp. H.M. Stationery Office. 2d. each, or 1s. 6d. net for 12.

*The Bills of Sale Acts, with an Epitome of the Law as affected by the Acts.* Herbert Reed, K.C. 14th Edition. By E. Holroyd Pearce, Barrister-at-law. 1926. Large crown 8vo. 388 pp. (with Index). Waterlow & Sons, Ltd., London Wall. 10s. 6d. net.

*Bankruptcy,* 1925. Forty-third General Annual Report by the Board of Trade. 1926. Crown 8vo. 79 pp. H.M. Stationery Office. 3s. 6d. net.

*Civil Judicial Statistics.* Statistics relating to the Judicial Committee of the Privy Council, the House of Lords, the Supreme Court of Judicature, County Courts, and other Civil Courts, for the year 1925. Compiled by the County Courts branch, Lord Chancellor's Department. 1926. Cmd. 2717. Crown 8vo. 47 pp. H.M. Stationery Office. 9d. net.

*Income Tax Act,* 1918, *and Finance Acts.* Supplement No. 1. Comprising (1) Text of the Income Tax and Super Tax provisions of the Finance Act, 1926; (2) Statutory Regulations and Orders; (3) Additional Indexings; (4) Manuscript Amendments; (5) Reprinted pages; and (6) Cross-references. 1926. Crown 4to. H.M. Stationery Office. 3s. net.

*The English and Empire Digest with Annotations.* Vol. XXXI. Landlord and Tenant (Parts vii–xxvii). Crown 4to. 1926. pp. lxxix and 587. Butterworth & Co., Bell Yard.

*All about Naturalisation.* A complete and practical Guide in securing United States Citizenship Papers. Jacob L. Tenny, LL.B., of Chicago Bar (former United States Naturalisation Examiner). 1st Edition. 1926. Crown 8vo. 57 pp. The Judy Publishing Co., Chicago. 1 dollar.

*The Law Student.* Vol. IV, No. 2. 15th November, 1926. 24 pages. The American Law Book Co., 272, Flatbush Ext., Brooklyn, N.Y.

*The Acts relating to the Income Tax,* by the late Stephen Dowell, M.A. 9th Edition. Embodying the Income Tax Act, 1918, the Finance Act, 1920, and the Finance Act, 1926, with complete Notes, References and Decisions. P. M. Smyth, Assistant Solicitor of Inland Revenue. 1926. Demy 8vo. pp. clvi, 1021, and (Index) 1241. Butterworth and Co., Bell Yard. 50s. net.

*A Varsity Career.* B. Dennis Jones, Precentor of Trinity College, Cambridge. 1926. Crown 8vo. pp. x and 89. W. Heffer & Sons, Ltd., Cambridge. 3s. 6d. net.

*The Massachusetts Law Quarterly.* Vol. XII. No. 1. November, 1926. Crown 8vo. 40 pp. Contains a reprint from "The Chicago Sunday Tribune," of a series of articles by Prof. Edson R. Sunderland, of the Law School of the University of Michigan, on the history of legal procedure and the character of the efficient system by which England now administers justice through the courts, entitled "Hundred years war for Legal Reform in England." The Massachusetts Bar Association, 60, State-street, Boston, Mass. W. P. H.

## Obituary.

### Mr. H. KELWAY POPE.

Mr. Horace Kelway Pope, solicitor and notary public, Southampton, died recently at Romsey in his seventy-fifth year. Admitted in 1874, he was one of the oldest members of the legal profession in that important port. He held the appointment of Coroner for the County Borough of Southampton for many years, having previously held the appointment of Deputy Coroner for nearly forty years, and was elected President of the Coroners' Society for England and Wales in 1910. He was a staunch believer in water divining, and his services in that respect were much sought after. Mr. Pope was a member of The Law Society, of the Solicitors' Benevolent Association, and of the Societies for Provincial Notaries Public of England and Wales.

### Mr. W. WILLOUGHBY, M.A.

Mr. William Willoughby, solicitor, the only surviving member of the well-known firm of Messrs. W. F. & W. Willoughby, Daventry, Northants, passed away at Staverton, Daventry, on Monday, the 22nd ult., at the age of sixty-seven. Admitted in 1886, Mr. Willoughby became Assistant Clerk to the Daventry Board of Guardians and Highway Authority in 1892, and in 1893 was appointed Clerk to both of those authorities. The state of his health, however, not permitting him to undertake so much additional work, he resigned these appointments in 1906. Mr. Willoughby was a member of The Law Society.

### Mr. J. F. OGILVIE.

Mr. James Finlay Ogilvie, solicitor, died at Tynemouth on Monday, the 29th ult., at the age of seventy-eight. Mr. Ogilvie, who was admitted in 1873, enjoyed a good practice in North Shields and the surrounding neighbourhood, from which he only retired a few years ago. Mr. Ogilvie was a member of The Law Society.

### Mr. F. J. BIGGER.

Mr. Francis Joseph Bigger, solicitor, Belfast, who died at his residence in that city on Thursday, the 9th inst., at the age of sixty-two, was well known throughout Ireland as a writer on the history, topography and genealogy of Ulster.

He was a member of an old-established Belfast family, and was a cousin of Joseph Gilles Bigger, a colleague of Parnell in the first use of organised obstruction in the House of Commons in the late 'seventies, which had for its express object the advancement of Home Rule. Although his large practice in the counties of Antrim and Down necessarily claimed his daily attention, he found time to write several articles on archæology, in addition to which he edited the second series of the "Ulster Journal of Archæology" for many years. He was elected a member of the Royal Irish Academy and a Fellow of the Royal Society of Antiquaries at an early age, whilst his best known work was "The Land War in Ulster." Mr. Bigger was always ready and willing to place all his papers, books and Celtic remains at the disposal of those who sought information about Ulster, and there were few visitors to Belfast who did not enjoy his hospitality.

MR. JOHN GRIERSON.

On Friday, the 3rd inst., the death occurred of Mr. John Grierson (senior), Town Clerk of Dumfries, an appointment which he had held for nearly forty years. His son, Mr. Robert A. Grierson, has been joint Town Clerk for some years. Mr. Grierson was approaching his ninetieth birthday.

W. P. H.

# House of Lords.

## Ocean Coal Co., Ltd. *v.* Davies.

3rd December.

WORKMEN'S COMPENSATION — INCAPACITY — RECOVERY — CONTINUANCE OF WEEKLY PAYMENTS AFTER RECOVERY — WORKMEN'S COMPENSATION ACT, 1923, s. 14.

*An employer who is paying compensation to a workman is not bound to continue the weekly payments up to the date of an award releasing him therefrom, if the workman has completely recovered at an earlier date.*

The question raised by this appeal was whether, under s. 14 of the Workmen's Compensation Act, 1923, weekly payments continued to be payable after the incapacity had ceased. The respondent was a coal miner in the employment of the appellants, and during the course of his employment he contracted the disease of nystagmus. The appellants admitted liability and paid him full compensation until 26th November, 1924, when the compensation was reduced by verbal agreement to £1 per week. On 3rd September, 1925, the appellants stopped the weekly payment and on 21st September served on the respondent an application for arbitration, on the footing that he had completely recovered. It was admitted that the respondent had recovered on 3rd September, 1925. By s. 14 of the Act of 1923: "An employer shall not be entitled otherwise than in pursuance of an agreement or arbitration to end or diminish a weekly payment under the principal Act except in the following cases . . ." It was admitted that the respondent did not come within those exceptions. The county court judge held, following *Davies* v. *Glyncorrwg Co.*, 1925, 2 K.B. 339, that the respondent was entitled to compensation up to the date of the award, and the Court of Appeal affirmed his decision.

Viscount DUNEDIN said that he had clearly come to the conclusion that the intention of s. 14 was to bestow a new privilege on the workman, and that privilege was that of keeping the payment going until it was ended by agreement or award or by the procedure under sub-s. (c). The question was whether the words used were adequate to carry out the intention of the statute, and, after much hesitation, he had come to the conclusion that they were. The section was badly framed, but not so badly framed that it could not be carried out. He was therefore of opinion that the appeal should be dismissed.

Lord ATKINSON, in the course of a judgment allowing the appeal, said he could find nothing in the Act authorising the distribution of doles though ticketed as weekly payments. But it was contended that s. 14 of the Act of 1923 entitled the arbitrator to make such an award as he had made. Such an interpretation appeared to him to be opposed to the cardinal principles of the statutes dealing with workmen's compensation. He thought it was clear that the object of the section was to deprive the employer of the power or right, to which he was theretofore entitled, arbitrarily at his own will and pleasure to end or diminish the weekly payment. Under that section he might still terminate the weekly payment if he acted "in pursuance of an agreement or arbitration," which words he thought meant simply the doing of what an agreement or arbitration authorised the employer to do; and so construed the section simply deprived the employer of the arbitrary right to end or diminish the weekly payment and left the Act of 1906 unrepealed and in full force. He thought therefore the appeal should be allowed.

The other noble and learned Lords concurred with Lord Atkinson.

COUNSEL: *Cave*, K.C., and *W. Shakespeare*; *Montgomery*, K.C., and *Lincoln Reed*.

SOLICITORS: *Bell, Brodrick & Gray*, for *Kensholes & Prosser*, Aberdare; *Smith, Rundell, Dods & Bockett*, for *Morgan, Bruce & Nicholas*, Pontypridd.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

# Court of Appeal.

## Harms (Incorporated) Ltd. *v.* Embassy Club Ltd. and Martan's Club Ltd.

10th November.

COPYRIGHT—MUSICAL PLAY—INFRINGEMENT—PERFORMANCE IN PUBLIC—PERFORMANCE IN CLUB WITHOUT CONSENT OF COMPOSER—COPYRIGHT ACT, 1911 (1 & 2 Geo. 5, c. 46), ss. 1, 2.

*A musical number which was part of a musical play was performed without the consent of the composer, by a professional orchestra, at a dancing club to which* 1,800 *members and their guests had access, in the presence of about* 180 *persons. There was evidence that the performance was calculated to cause serious damage to the owners of the copyright.*

*Held, that on the facts the performance was a performance in public within the meaning of the Copyright Act,* 1911, *and was an infringement of the plaintiff's copyright.*

Decision of EVE, J. (70 SOL. J., 858, 1926, Ch. 870), *affirmed*.

Appeal from a decision of Eve, J. The action was brought by the plaintiffs for an injunction to restrain the defendants from infringing the plaintiffs' copyright in a piece of music entitled "That Certain Feeling," part of a musical play entitled "Tip-Toes," by performing it in public without the consent of the plaintiffs. The piece was performed at the club which was a high-class dancing club in Bond-street, belonging to the second defendants, Martan's Club, by the club orchestra, on 4th March, 1926, at which date the piece "Tip-Toes," which was of American origin, had not been produced in London. There were 1,800 members of the club, the privileges of which included the right to introduce guests on payment of ten shillings for each guest introduced after 9 p.m.; on the evening in question, there were some 130 members and 50 guests present when the music was played, and dancing took place to it.

EVE, J., held that the performance was one "in public," and granted an injunction. The defendants appealed.

Lord HANWORTH, M.R., having stated shortly the facts as found by Eve, J., proceeded: It was obvious that the words "in public" were not easy to define, and they were commonly used with regard to a number of activities in which people shared. Certain cases had been referred to by counsel for the appellant, particularly *Wall* v. *Taylor*, 11 Q.B.D., 102,

and *Duck* v. *Bates*, 13 Q.B.D., 843. The words of the present statute were different, but it was necessary to consider the nature of the right given to the owner of a musical composition. Lord ESHER, M.R., in *Duck* v. *Bates*, 13 Q.B.D., at p. 845, said: "I agree that what was intended to be protected was the value of the author's invention—that is the key to the construction of the Act; he does not want sentimental protection; he has power himself to represent his drama, and to confer upon others the right to represent it. That power gives a value to his production. If an author performs his drama, and if it is performed also by another, the author will be injured." The Copyright Act, 1911, gave protection to the author of a musical or dramatic work. It was true that the protection amounted to a monopoly, but no prejudice was to be attached to the use of that word. In *Wall* v. *Taylor*, 11 Q.B.D., 102, Lord Esher said that what was a representation or performance at a place of dramatic entertainment must to some extent be a question of fact. In *Duck* v. *Bates*, Bowen, L.J., was of the same opinion. Those authorities were ample foundation to support what Eve, J., had decided, namely, that what was a performance "in public" was largely a question of fact. As the Master of the Rolls said in *Duck* v. *Bates*, at p. 847, there must be present a sufficient part of the public who would also go to a performance licensed by the author as a commercial transaction, otherwise the place where the drama was represented would not be a place of dramatic entertainment. One must consider also whether the performance could be described as "domestic or private," and also the place where the performance was given. Those were sufficient tests to be applied. Here the club was evidently a high-class club open to any persons who were able to pay a substantial entrance fee and the annual subscription, and care was taken by means of the rule for annual re-election of members to exclude any persons who might be undesirable. On the facts one could not answer in the negative the question: Was the owner of the musical copyright in the piece performed injured? He thought that Eve, J., had come to a right conclusion on the facts, and on those facts he himself would have come to the same conclusion. If it were possible to evade the provisions of the Copyright Act, 1911, by such performances as the present a very serious inroad would be made upon an author's property. The appeal failed and would be dismissed.

SARGANT, L.J., delivered judgment to the same effect and LAWRENCE, L.J., concurred.

COUNSEL: *Vaisey*, K.C., and *Winterbotham*; *Gover*, K.C., and *Henn Collins*.

SOLICITORS: *Whitelock and Storr*; *Pollock & Co.*

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

## High Court—Chancery Division.

*In re* **Vincent: The Public Trustee** *v.* **Vincent and Others.**

Clauson, J. 11th November.

WILL—CONSTRUCTION—MEANING OF "UTERINE" BROTHERS AND SISTERS.

***A gift to "uterine" brothers and sisters is a gift to brothers and sisters by the same mother but by a different father.***

Originating summons. This was a question of who were entitled to take under a gift and to "uterine brothers and sisters." The facts were as follows:—By a deed of settlement, dated the 23rd day of November, 1853, and made between William Vincent, the settlor, of the one part, and trustees thereof of the other part, for the purpose of providing for his daughter, A. C. G. Vincent, by his then second wife, Phoebe L. C. Vincent (to whom the settlor was married in 1847), the settlor declared the following trust of certain securities, which had been placed in the names of his trustees, viz., to pay and apply the interest thereof for the maintenance of his daughter, A. C. G. Vincent, and in the event of her dying without having had any child (an event which happened), then upon trust for her uterine brothers and sisters if there should be any then living by the settlor's wife, P. L. C. Vincent, to be equally divided between such her brothers and sisters, if more than one, the share of each such child, being a brother, to be vested in and payable to him at his age of twenty-one years, and being a sister, at her age of twenty-one years or day of marriage. It was further provided that, in the event of her dying without having had any such uterine brothers and sisters, or in case they shall not attain a vested interest, then upon trusts in favour of A. C. G. Vincent's half-sister, Elizabeth Baker, for her life, and after her decease, for her eldest daughter, Jessie Baker, and her children. A. C. G. Vincent married, in 1873, and died in 1925, without ever having had a child. At her death the state of the family was as follows:—None of the brothers and sisters of Mrs. Elliott, children of her father, William Vincent, by his marriage with her mother, were living at her decease, except the defendant, Arthur C. F. Vincent. One of such sisters, Phoebe Jane Vincent, who became the wife of William Harris Lloyd, and pre-deceased Mrs. Elliott, died intestate, leaving her said husband her surviving. He died in 1923, and the defendant, Katherine P. McElwee, was his legal personal representative. Both William Vincent and his second wife, Phoebe, had been previously married, and each had had children by such marriage. Mrs. Vincent, by her marriage in 1840, with George R. P. Becher, had two children, namely, George A. B. Becher and Henry J. E. Becher, both of whom pre-deceased Mrs. Elliott. Elizabeth Baker, named in the settlement, was a daughter of William Vincent by his previous marriage, in 1817. She died, leaving her daughter, the defendant, Jessie Baker (named in the settlement), who was married to and later became the widow of Charles Vincent Lloyd. It was contended on behalf of Jessie, that uterine brothers and sisters meant brothers and sisters by the same mother, but a different father, and various dictionaries were referred to, including Wharton's "Law Lexicon" and Tomlin's "Law Dictionary." There was no context in the settlement which displaced that meaning. The half-brothers and sister could not take, unless they survived their sister, so that the ultimate trust in favour of Jessie took effect, the Becher children having pre-deceased her. For Arthur Vincent, it was submitted that the term "uterine" had not the effect of excluding a brother of Mrs. Elliott by the same mother and father, and that being the only member of the class who survived her, he was entitled to the whole fund. For the Bechers, it was contended that uterine brothers and sisters meant brothers and sisters by the same mother but by a different father, but that it was not necessary for them to survive their sister, Mrs. Elliott.

CLAUSON, J., after stating the facts, said:—*Primâ facie* the expression "uterine brothers and sisters" bears the meaning attributed to it in the dictionaries referred to by counsel. There is no context in the settlement which displaces that meaning. Therefore the class of brothers and sisters of Mrs. Elliott entitled to the settled fund are the children of Mrs. Phoebe L. C. Vincent by any husband other than Mr. William Vincent, and consequently Mrs. Elliott's brothers and sisters born of the same parents are excluded from any interest in the settled funds. But inasmuch as upon the true construction of this settlement it is essential for such brothers and sisters of Mrs. Elliott to survive her, in the events which happened, namely, of her half-brothers, George K. P. Becher and Henry J. E. Becher, pre-deceasing her, the ultimate trust in favour of the defendant, Mrs. Jessie Lloyd, takes effect.

COUNSEL: *E. M. Winterbotham*; *J. V. Nesbitt*; *Wilfrid M. Hunt*; *W. F. Waite*; and *Peter H. L. Brough*.

SOLICITORS: *Houseman & Co.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

*In re* **Bower Williams.** Astbury, J. 15th November.

BANKRUPTCY—SETTLEMENT—PROPERTY COMING TO SETTLOR "IN RIGHT OF HIS WIFE"—WIFE'S INTESTACY—SETTLEMENT ON CHILD—BANKRUPTCY OF SETTLOR—BANKRUPTCY ACT, 1914, 4 & 5 Geo. 5, c. 59, s. 42.

*Property devolving on a husband on the intestacy of his deceased wife is property that has accrued to the husband after marriage in right of his wife within the exception to s. 42 of the Bankruptcy Act, 1914.*

Cooper *v.* Macdonald, 1877, 7 Ch. D. 288, *applied.*

Motion. The trustee in bankruptcy of Bower Williams on 10th July, 1926, issued a notice of motion against his settlement trustees asking for a declaration that the settlement was void against him under s. 42 of the Bankruptcy Act, 1914. The facts were as follows: In 1913 Bower Williams married one Florence Ling, and in March, 1925, his wife died intestate, and in May the husband took out letters of administration to her estate. The wife's personal property to which the husband became entitled on her intestacy included sixty shares of £20 each in a private company registered as W. Ling Limited. By a voluntary settlement dated 4th June, 1925, the husband settled these sixty shares on certain trusts for the benefit of his infant daughter and himself. In April, 1926, a receiving order and order of adjudication in bankruptcy were made against the husband and a trustee appointed. Section 42 provides that with certain exceptions any settlement of property shall, if the settlor becomes bankrupt within two years after the date thereof, be void against the trustee in the bankruptcy, and one of the exceptions is "a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife." For the trustee it was contended that property devolving on the husband on the intestacy of his deceased wife was not property that had accrued to him in right of his wife, and for the settlement trustees it was contended that although they could not support the settlement as regarded the husband's beneficial interest thereunder, the daughter's interest thereunder was within the exception, and they referred to *Cooper* v. *Macdonald*, 1877, 7 Ch. D. 288; *In re Lambert's Estate*, 1888, 39 Ch. D. 626; *Smart* v. *Tranter*, 1890, 43 Ch. D. 587; and *Surman* v. *Wharton*, 1891, 1 Q.B. 491, as showing the mode in which a husband took his wife's separate estate on an intestacy.

ASTBURY, J., after stating the facts said: It is not disputed that the beneficial interest in the wife's shares passed on her intestacy to her husband. Whatever the words of the exception in s. 42 were intended to cover, in my judgment these shares had accrued to the husband after marriage in right of his wife. It was contended that property devolving on the husband on the wife's intestacy did not accrue to him in right of his wife, but it is impossible to construe the section in that way. The property is therefore within the exception. There will be a declaration that the daughter's interest under the settlement did not pass to the trustee in bankruptcy, but the husband's interest did so pass.

COUNSEL: *Tindale Davis; F. Whinney.*

SOLICITORS: *Osborn & Osborn; Teff & Teff.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

## REPAYMENT OF MINERS' RELIEF.

**What is regarded as a test case for the repayment of moneys paid out on relief by means of loan was heard at Pontypridd Police Court on the 8th inst., when the local board of guardians sought an order of attachment against the Mynachdy Colliery Company in respect of one of their employés, who admitted having received £8 from the guardians. In making an order of 2s. per month and attaching the colliery company to collect such a sum from the man's wages, the Stipendiary (Mr. Lleufer Thomas) said the proceedings were taken under an Act of 1834, before the development of industries.**

# Societies.

## The Law Society.

### HONOURS EXAMINATION—NOVEMBER, 1926.

**At the examination for honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the Examination Committee recommended the following as being entitled to honorary distinction:—**

FIRST CLASS.

(In order of Merit.)

**Charles Anderson Hinks (Mr. John Fenwick Latimer, of Darlington; and Messrs. E. C. Rawlings, Butt & Bowyer, of London); John Francis Fowkes, B.A. Oxon. (Mr. Henry Evett Fowkes, M.A., of the firm of Messrs. Fowkes & Son, of London); John Woodman Smith, B.A. Oxon. (Mr. Edward Ernest Winterbotham, of London).**

SECOND CLASS.

(In alphabetical order.)

**Walter George Bancroft (Mr. George William Moore, LL.B., of the firm of Messrs. Band, Hatton & Co., of Coventry; and Messrs. Collyer-Bristow & Co., of London); Walter Sydney Chaney (Mr. William Seaford Sharpe, of the firm of Messrs. Sharpe, Pritchard & Co., of London); John Brian Ramsay Davies, B.A., LL.B. Cantab (Mr. John James Withers, C.B.E., M.P., of the firm of Messrs. Withers, Bensons, Currie, Williams & Co., of London); Charles Greenwood (Mr. John William Arthur Ollard, of the firm of Messrs. Ollard & Ollard, of Wisbech); Morris Joseph Hart-Leverton, LL.B. London (Mr. Charles May, LL.B., of London); James Howard Jellyman (Mr. Harry Ernest Sargent, of Wolverhampton); John Frederick Cooper Mills (Mr. John Faulkner Stops, of the firm of Messrs. Becke, Green & Stops, of Northampton); Gabriel Delabere Peters (Mr. Arthur Peters, B.A., of the firm of Messrs. Bickers & Peters, of York; and Messrs. Hedley Norris & Co., of London); Reginald William Platt (Mr. George Edward Horton Bellingham, of Wimbledon, Surrey); Herbert Reginald Snowball (Mr. Alfred Darby Minton-Senhouse, of the firm of Messrs. Lazenby & Senhouse; and Mr. John Booth Lazenby, of the firm of Messrs. Lazenby & Hulton, both of Newcastle-upon-Tyne); Francis Stanley Vaughan (Mr. Charles Sidney Pryce, J.P., of the firm of Messrs. Pryce, Tomley & Pryce, of Montgomery) Ronald Charles Webb (Mr. Charles Webb, of Brighton).**

THIRD CLASS.

(In alphabetical order.)

**Frank Elworthy Baldock, B.A. Oxon (Mr. Charles Henry May, of the firm of Messrs. May, May & Deacon, of London); Harold Bostock (Mr. Henry Bostock, of Hyde; and Mr. Harry Thomas Sales, of Stockport); Alfred Robert Meredith Burton (Mr. Arthur Angell Burton, B.A., LL.B., of Leeds); Leonard Clare (Mr. Norman Alexander Foster, of the firms of Messrs. Gaunt, Foster & Co., of Bradford; and Messrs. Gaunt, Foster & Hill, of London); Richard William Penn Cockerton (Mr. Vernon Reilly Cockerton, of the firm of Messrs. Goodwin & Cockerton, of Bakewell; and Mr. Henry Montagu Ryland, of the firm of Messrs. Woodcock, Ryland & Parker, of London); Philip Bond Cockshutt (Mr. Joseph Cockshutt, of the firm of Messrs. Slaughter, Colegrave & Cockshutt, of London); Frank Cyril Day (Mr. Cecil Crust, of Spalding); Reginald William Eades (Mr. Alan George Hawkins, M.A., of King's Lynn); Katharine Ogilvy Heaton (Mr. Beresford Rimington Heaton, B.A., J.P., of the firm of Messrs. Rider, Heaton, Meredith & Mills, of London); John Alfred Lloyd Humphreys (Mr. John Humphreys (deceased), of the firm of Messrs. Jones & Jones; and Mr. Robert Griffith, both of Portmadoc; and Messrs. Rawle, Johnstone & Co., of London); Geoffrey Kellie Ireland (Mr. Herbert Francis Kellie Ireland, of London); Sydney David McCloy (Mr. John Henry Turner, of York; and Messrs. Eland, Nettleship & Butt, of London); Sidney Edgar Mann, LL.B., London (Mr. Francis Frederick Charles Webb, of the firm of Messrs. Collyer, Davis & Webb, of London); Anthony Forbes Moir (Mr. Charles Forbes Moir, of the firm of Messrs. Forrester, Moir & Co., of Malmesbury; and Messrs. Robbins, Olivey & Lake, of London); George Charles Nicholls, LL.B., London (Mr. George Fletcher Jones, of London); John William Parker (Mr. Claude Guy Leatham, of the firm of Messrs. Claude Leatham & Co., of Wakefield); John Renwick, B.A., LL.B. Cantab. (Mr. Charles Stalley Coombe, of the firm of Messrs. Bramley & Coombe, of Sheffield); Charles Herbert Stanley Smith (Mr. David John Edmonds, of the firm of Messrs. G. S. Warmington & Edmonds, of London); James Geoffrey Sanxter Tompkins, B.A. Oxon. (Mr. Ivan Kenneth Fraser, of the firm of Messrs. R. S. Fraser and Co., of London).**

The Council of The Law Society have accordingly given a class certificate and awarded the following prizes:—

To Mr. Hinks—The Clement's Inn Prize, value about £42.

To Mr. Fowkes—The Daniel Reardon Prize, value about £21.

To Mr. J. W. Smith—The Clifford's Inn Prize, value about £5 5s.

The Council have given class certificates to the candidates in the second and third classes.

Eighty-eight candidates gave notice for examination.

### SPECIAL PRIZES OPEN TO CANDIDATES AT THE HONOURS EXAMINATIONS IN THE YEAR 1926.

THE SCOTT SCHOLARSHIP.—Reginald Pilkington, LL.B. Leeds, having, in the opinion of the Council, shown himself best acquainted with the Theory, Principles and Practice of Law, they have awarded to him the Scholarship founded by the late Mr. James Scott, of London.

Mr. Pilkington served his articles of clerkship with Mr. Alfred Ernest Greaves, of the firm of Messrs. Greaves and Atter, of Wakefield; and was awarded the Clement's Inn Prize in March, 1926.

THE BRODERIP PRIZE FOR REAL PROPERTY AND CONVEYANCING.—Reginald Pilkington, LL.B. Leeds, having, in the opinion of the Council, shown himself best acquainted with the Law of Real Property and the Practice of Conveyancing, otherwise passed a satisfactory Examination and attained Honorary Distinction, and being under twenty-seven years of age, they have awarded to him the Prize, consisting of a Gold Medal, founded by the late Mr. Francis Broderip, of London.

Mr. Pilkington served his articles of clerkship as before stated.

THE CLABON PRIZE.—Reginald Pilkington, LL.B. Leeds, having, in the opinion of the Council, shown himself best acquainted with the Principles of Equity, and otherwise passed a satisfactory Examination, they have awarded to him the Prize founded by the late Mr. John Moxon Clabon, of London.

Mr. Pilkington served his articles of clerkship as before stated.

#### LOCAL PRIZES.

THE TIMPRON MARTIN PRIZE FOR LIVERPOOL STUDENTS.—Edward Holland Hughes, LL.B. Liverpool, who served two-thirds of his period of service in Liverpool, passed the best Examination, being not above twenty-seven years of age, and attained Honorary Distinction in the Second Class, the Council have awarded to him the Gold Medal founded by the late Mr. Timpron Martin, of Liverpool.

Mr. Hughes served his articles of clerkship with Stephen Roxby Dodds, M.A., LL.B., of the firm of Messrs. Dodds, Ashcroft & Cook, of Liverpool; and was awarded Second Class Honours in June, 1926.

THE ATKINSON CONVEYANCING PRIZE FOR LIVERPOOL OR PRESTON STUDENTS.—Edward Holland Hughes, LL.B. Liverpool, who served two-thirds of his period of service in Liverpool, having shown himself best acquainted with the Law of Real Property and the Practice of Conveyancing, obtained at least two-thirds of the total marks obtainable in those subjects, otherwise passed a satisfactory Examination, being not above twenty-seven years of age, and attained Honorary Distinction, the Council have awarded to him the Gold Medal founded by the late Mr. John Atkinson, of Liverpool.

Mr. Hughes served his articles of clerkship as before stated.

THE RUPERT BREMNER MEDAL FOR LIVERPOOL STUDENTS.—Edward Holland Hughes, LL.B. Liverpool, who served two-thirds of his period of service in Liverpool, having shown himself best acquainted with the Principles of Common Law, obtained at least two-thirds of the total marks obtainable in that subject, otherwise passed a satisfactory Examination, being not above 27 years of age, and attained Honorary Distinction, the Council have awarded to him the Prize, consisting of a Gold Medal, founded in memory of the late Mr. Rupert Bremner, of Liverpool.

Mr. Hughes served his articles of clerkship as before stated.

THE BIRMINGHAM LAW SOCIETY'S GOLD MEDAL.*—Mary Katherine Ruby Weston, having, from among the candidates who have passed two-thirds of their term of service with a member of the Birmingham Law Society, been placed first in Order of Merit, attained Honorary Distinction and awarded a Prize, the Council have awarded to her the Gold Medal of the Birmingham Law Society.

Miss Weston served her articles of clerkship with Mr. George Augustus Weston, of the firm of Messrs. Weston, Fisher and Weston, of Kidderminster; and was awarded the Clifford's Inn Prize in June, 1926.

* *The award of this Medal carries with it the Horton Prize.*

THE BIRMINGHAM LAW SOCIETY'S BRONZE MEDAL.—The Examiners reported that there was no candidate qualified to take this Prize.

THE STEPHEN HEELIS PRIZE FOR MANCHESTER AND SALFORD STUDENTS.—The award of this Prize will be announced on the 17th inst.

THE NEWCASTLE-UPON-TYNE PRIZE.—Herbert Reginald Snowball, who served two-thirds of his period of service in Newcastle-upon-Tyne, having passed the best Examination during the year and attained Honorary Distinction in the Second Class, the Council have awarded to him the Prize founded by Mr. Robert Brown, of Newcastle-upon-Tyne.

Mr. Snowball served his articles of clerkship with Mr. Alfred Darby Minton-Senhouse, of the firm of Messrs. Lazenby and Senhouse; and Mr. John Booth Lazenby, of the firm of Messrs. Lazenby & Hulton, both of Newcastle-upon-Tyne; and was awarded Second Class Honours in November, 1926.

THE WAKEFIELD AND BRADFORD PRIZE. — Reginald Pilkington, LL.B. Leeds, who served two-thirds of his period of service in Wakefield, and whose principal was at the date of the articles a member of The Law Society, having passed the best Examination during the year and attained Honorary Distinction in the First Class, the Council have awarded to him the Prize founded by the late Mr. Samuel Smith Seal, of London.

Mr. Pilkington served his articles of clerkship as before stated.

THE SIR GEORGE FOWLER PRIZE.—Stanley John Rowland, who served two-thirds of his period of service in the County of Devon, and whose principal was at the date of the articles a member of The Law Society, having passed the best Examination during the year and attained Honorary Distinction in the Second Class, the Council have awarded to him the Prize founded by Sir George Fowler, of London.

Mr. Rowland served his articles of clerkship with Mr. Apsley Kenelm Peter, of the firm of Messrs. Peter, Peter & Sons, of Holsworthy; and was awarded Second Class Honours in March, 1926.

THE MELLERSH PRIZE.—Ronald Charles Webb, having, from among the candidates who have been articled in the Counties of Surrey and Sussex or who are the sons of solicitors who have resided and practised in either of those counties, shown himself best acquainted with the Law of Real Property and the Practice of Conveyancing, the Council have awarded to him the Prize founded by the late Mr. Robert Edmund Mellersh, of Godalming.

Mr. Webb served his articles of clerkship with Mr. Charles Webb, of Brighton; and was awarded Second Class Honours in November, 1926.

## Solicitors' Benevolent Association.

The monthly meeting of the Directors of this Association was held at The Law Society's Hall, Chancery-lane, London, on the 8th inst. The Right Hon. Sir William Bull, Bart., M.P., in the chair. The other Directors present were Sir A. Copson Peake (Leeds), and Messrs. F. E. F. Barham, A. C. Borlase (Brighton), T. S. Curtis, E. F. Dent, E. F. Knapp-Fisher, C. G. May, H. A. H. Newington, R. W. Poole, M. A. Tweedie and A. B. Urmston (Maidstone). £884 was distributed in grants of relief; fifteen new members were admitted; and other general business transacted.

# Law Students' Journal.

## Wakefield and District Law Students' Society.

At a meeting of the Society held in The Law Library, Wakefield, on Wednesday evening, the 1st inst., with Mr. A. Bebbington in the chair, the following subject was debated: "While the tenant of a house within s. 1 of the Housing Act, 1925, was away from the house on business, leaving his wife in charge of the house, one of the treads of the stairs broke, owing to the rottenness of the wood. The wife did not inform the landlord of the break. A fortnight after the break the tenant returned at night and was injured by a fall on the stairs occasioned by the broken tread. The break was patent, but the tenant did not notice it, the stairs being dark. Can he recover damages from the landlord?" Mr. F. L. Barlow opened for the affirmative, and Mr. C. V. H. Smith, LL.B., replied for the negative. The following members also spoke: Miss Barker and Messrs. W. H. Bagley, E. Barker, J. L. J. Burton, A. A. Collins, C. Craven, H. Hall, J. H. Lawton, H. Partington, and P. B. Thomas. The chairman having summed up, after the leaders had briefly replied, the motion was carried by eleven votes.

# Rules and Orders.

THE ENFRANCHISED LAND (STEWARDS' FEES) REGULATIONS, 1926, DATED JANUARY 7, 1926, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER SECTIONS 129, 131 AND 189 OF THE LAW OF PROPERTY ACT, 1922 (12 & 13 GEO. 5, C. 16).

The Minister of Agriculture and Fisheries, in exercise of the powers conferred upon him by Sections 129, 131 and 189 of the Law of Property Act, 1922, and of every other power enabling him in that behalf, hereby prescribes that the fees to which a steward of a manor shall be entitled in respect of transactions effected on or after the first day of January, nineteen hundred and twenty-six, and in respect of a certificate under Sub-section (2) or (6) of the first-mentioned Section shall be in accordance with these Regulations.

PART I.

1. This part of these Regulations shall apply only where the steward has been appointed before the twenty-ninth day of June, nineteen hundred and twenty-two.

2. Where the transaction is one in respect of which a customary fee would have been payable if the land had not been enfranchised the fee shall be the customary fee.

3. Where the transaction is a mortgage the fee shall be such customary fee as would have been payable on the conditional surrender of the land if it had not been enfranchised.

4. Where the customary fee is regulated by the length of the customary assurance or other entry on the court rolls then the fee shall likewise be regulated by the length of the instrument which, after the thirty-first day of December, nineteen hundred and twenty-five, is used to carry out the transaction or if more than one instrument is so used then by the length of the instrument containing the assurance of the land.

5. Where the customary fee would have been regulated or partly regulated by the number of parties to the customary assurance, the fee shall likewise be regulated or partly regulated by the number of parties to the instrument which on or after the first day of January, nineteen hundred and twenty-six, is used to carry out the transaction, or, if more than one instrument is so used, then by the number of parties to the instrument containing the assurance of the land.

PART II.

6. This part of these Regulations shall apply in cases where fees are not payable under Part I of these Regulations.

7. The following fees (hereinafter referred to as "standard fees" and "extra fees") shall be payable, provided that wherever the standard fee or the standard fee together with the extra fees (if any) would be higher than the fee which would have been payable if the transaction had been effected immediately before the first day of January, nineteen hundred and twenty-six, and if such instruments had been used and such formalities observed as were used or observed according to the system usually prevailing in the manor at such time, the fee which would have been so payable before that date shall be payable instead of the standard fee and extra fees (if any).

STANDARD FEES.

| Nature of Transaction. | | Amount of Standard Fee. £ s. d. |
|---|---|---|
| (*a*) Conveyance, (including exchange, partition and conveyance in consequence of a death) vesting deed or declaration, vesting order of a Court or other competent authority, vesting assent or appropriation on a death (whether under a will or an intestacy) or a succession under a settlement. | Where the annual value of the property does not exceed £25 .. .. | 1 11 6 |
| | Where the annual value of the property exceeds £25 but does not exceed £80 .. .. | 2 12 6 |
| | Where the annual value of the property exceeds £80 | 3 13 6 |
| (*b*) Mortgage .. .. | Where the mortgage money does not exceed £300 .. | 1 1 0 |
| | Where the mortgage money exceeds £300 but does not exceed £1,500 .. | 2 2 0 |
| | Where the mortgage money exceeds £1,500 .. .. | 3 3 0 |
| | Where there are any fines, reliefs, heriots or other lord's dues to assess and collect, for assessing and collecting the same an additional .. | 0 10 6 |
| (*c*) Transfer of Mortgage .. | One half of the standard fee which would be payable for an original mortgage. | |
| (*d*) Discharge of Mortgage | .. .. .. | 0 13 4 |
| (*e*) Lease (including sub-lease but not including lease or sub-lease granted for mortgage purposes) | Where the annual value of the property does not exceed £25 .. | 0 10 6 |
| | Where the annual value of the property exceeds £25 but does not exceed £100 .. | 1 11 6 |
| | Where the annual value of the property exceeds £100 | 2 12 6 |
| (*f*) Assignment of Lease (including sub-lease but not including lease or sub-lease granted for mortgage purposes). | Half the standard fee that would be payable on the original lease. | |
| (*g*) Licence (where necessary to fell timber, to build, to pull down buildings and the like. | .. .. .. | 1 1 6 |
| (*h*) Licence to work mines and minerals. | Reasonable remuneration for work done. | |

EXTRA FEES.

Payable in addition to the Standard Fee in each of the above-mentioned cases (*a*) to (*f*) inclusive—

(i) Where there are more than two grantors, 3*s.* 4*d.* for each additional search required, with a maximum of £1 for six or more such additional searches.

(ii) Where difficulty arises over the identification or description of the tenements affected, reasonable charges for the extra work required in all cases where under the system usually prevailing in the manor before the first day of January, nineteen hundred and twenty-six, the steward would have been entitled to make such charges.

(iii) Where the assurance exceeds 15 folios:—

(*aa*) If the parties present to the steward with the original assurance a copy of the assurance or a memorandum thereof printed, written or typed in durable ink or other durable substance in a form indicated by the steward and on stout paper of a size to be fixed by the steward, the steward's fee for comparison, filing and indexing such copy or memorandum shall be 3*d.* for each folio of the assurance, copy or memorandum in excess of 15, and

(*bb*) If the steward himself prepares such copy or memorandum his fee shall be 6*d.* for each such folio in excess of 15.

(iv) Where the assurance produced for the endorsement of a certificate refers to a plan or tracing, reasonable charges for any labour necessarily expended in copying or otherwise dealing with such plan or tracing.

(v) Where a valuation of the property affected is required, reasonable charges for the necessary additional correspondence.

(vi) Where a heriot is marked or seized or compounded for, a reasonable charge for the time and trouble involved.

(vii) For respiting fealty (if and where required)—3*s.* 4*d.*

8. The foregoing standard fees and extra fees shall be subject to the following modifications:—

(i) If upon the production to the steward of an assurance it appears that any previous assurance or assurances dated the first day of January, nineteen hundred and twenty-six, or subsequently have not been produced to the steward for endorsement as provided by Sub-section (2) of Section 129 of the Law of Property Act, 1922, the fee payable to the steward in respect of each such previous assurance shall be one half of the standard fee together with one half of the extra fees (if any) applicable to the transaction to which such previous assurance relates.

(ii) Where an assurance is produced to a steward which relates to land comprised in more than one manor the standard fee and extra fees (if any) payable to the steward shall be such amount as would have been payable if the portions of the assurance which relate solely to other manors had been omitted.

(iii) In cases of exchanges of lands subject to manorial incidents in the same manor each side of the transaction shall be treated for the purposes of calculating the standard fee and the extra fees as a separate dealing.

(iv) In the case of land the freehold of which immediately prior to the first day of January, nineteen hundred and twenty-six, was in the tenant, the standard fee and extra fees, if applicable, shall be reduced by one half.

9. The foregoing standard fees and extra fees, where applicable shall be deemed to include all work required to be done by a steward in respect of the transaction dealt with and no other fee shall be payable except the fees prescribed in Part III of these Regulations.

PART III.

10. The fees prescribed in this part of these Regulations shall be payable in addition to any fees payable under any other part of these Regulations.

11. The fee payable to a steward for the endorsement of a certificate under Sub-section (2) of Section 129 of the Law of Property Act, 1922, shall be 10s. 6d.

12. The fee payable to the steward for a certificate under Sub-section (6) of Section 129 of the Law of Property Act, 1922, shall be the sum of £1 10s., together with such of the extra fees prescribed in Part II of these Regulations as may be applicable.

PART IV.

13. In any case to which Sub-section (10) of Section 129 of the Law of Property Act, 1922, applies, the steward's fee shall be included in the sum of ten shillings thereby made payable to the steward, and nothing in these Regulations shall be deemed to require the payment of any other fee.

14. These Regulations apply to fees payable in respect of land liable to any heriot quit rent free rent or other manorial incident whatsoever as well as to fees payable in respect of enfranchised land.

15. In these Regulations except where the context otherwise requires :—

The expression "annual value" means the gross annual value of the land as separately assessed for the purposes of Schedule A to the Income Tax Act, 1918, or, where the land is not separately so assessed such sum as, in the opinion of a valuer, would have been the gross annual value for the purposes of the said Schedule A if the land had been separately so assessed. A valuer for this purpose shall be appointed by agreement between the landowner and the steward, or, in default of such agreement, by the Minister of Agriculture and Fisheries.

The expression "transaction" means a dealing with or a devolution of the tenant's interest and does not include searches or the production of or furnishing of copies of Court Rolls not in connection with such dealing or devolution or devolutions of the lord's interest.

The expression "grantor" means a person by or from whom a legal estate is conveyed or devolves.

16. These Regulations shall come into operation as from the first day of January, nineteen hundred and twenty-six, and may be cited as The Enfranchised Lands (Steward's Fees) Regulations, 1926.

17. These Regulations do not extend to Scotland or Ireland.

In witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed this seventh day of January, nineteen hundred and twenty-six.

(L.S.) *F. L. C. Floud*,
Secretary.

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REGULATIONS, DATED MARCH 3, 1926, AS TO THE CONDUCT OF BUSINESS AT THE LAND REGISTRY.

I, George Viscount Cave, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by Section 126 of the Land Registration Act, 1925, and every other power enabling me in that behalf, hereby make the following regulations :—

1. During a vacancy in the office of Chief Land Registrar, the senior Registrar of the Land Registry may perform and exercise all functions and authorities by law assigned to or conferred upon the Chief Land Registrar.

2. During the absence of the Chief Land Registrar, the senior Registrar of the Land Registry or, in the absence of the senior Registrar, such other Registrar as the Chief Land Registrar may from time to time direct, may perform and exercise all functions and authorities by law assigned to or conferred upon the Chief Land Registrar.

3. Any Registrar acting under the authority conferred by or in pursuance of these Regulations shall, while so acting, be styled the Acting Chief Land Registrar.

Dated the 3rd day of March, 1926.

*Cave*, C.

THE CHANCERY OF LANCASTER (LAW OF PROPERTY AND OTHER ACTS) RULES, 1926. DATED JUNE 18, 1926.

The Right Honourable Edgar Algernon Robert Viscount Cecil of Chelwood, P.C., K.C., Chancellor of the Duchy and County Palatine of Lancaster, with the advice and consent of Courthope Wilson, Esquire, K.C., Vice Chancellor of the said County Palatine of Lancaster, and with the approval of the authority empowered to make Rules for the Supreme Court doth hereby make the following Rules in pursuance of the powers and authorities in that behalf given to him by the Chancery of Lancaster Acts, 1850 to 1890, and in pursuance and execution of all other powers and authorities enabling him in that behalf :—

PART I.

*Trustee Act*, 1925 (15 & 16 Geo. 5. c. 19).

1. The Rules which came into force on the 1st day of January, 1894, entitled "Proceedings under the Trustee Act, 1893," shall be amended as follows :—

(*a*) In the heading and in Rule 6 the figures "1925" shall be substituted for the figures "1893."

(*b*) Rule 2 shall be annulled.

(*c*) In paragraph (1) of Rule 3 after the words "where a Trustee" there shall be inserted the words "or other person" and the words "section forty-two of" shall be omitted.

(*d*) The following Rule and parts of Rules shall be annulled.

(i) so much of sub-paragraph (*c*) of paragraph (1) of Rule 3 as follows the words "to the credit of the Trust."

(ii) so much of Rule 4 as follows the words "The Registrar on production of an office copy of the Affidavit shall give the necessary directions for lodgment and place the securities or money to the account of the particular trust."

(*e*) Rule 3 as so amended shall stand as Rule 2.

(*f*) Rule 7 shall be annulled provided that nothing herein contained shall revive any of the Rules or Orders repealed by the said Rule 7.

(*g*) Rule 4, Rule 5, and Rule 6, as amended shall stand respectively as Rule 3, Rule 4, and Rule 5.

(*h*) The following Rule shall be added and stand as Rule 6.

6. These Rules shall come into operation on the 1st January, 1926.

PART II.

*General.*

2.—(1) All applications to the Court under any of the Acts to which this Rule relates shall be made in the manner in which applications may be made under Order XLVIII, Rule 3.

(2) This Rule relates to the Law of Property Act, 1922, the Law of Property Act, 1925, the Settled Land Act, 1925, the Administration of Estates Act, 1925, the Land Registration Act, 1925, and the Land Charges Act, 1925, and any Act for the time being in force amending, re-enacting or replacing any of such Acts.

(3) Every Petition or notice of motion under this Rule shall be intituled in the matter of the Act or Acts under which the application is made and in the matter of the Will, Settlement, Trust, or Property, as the case may be to which the application relates, with the addition in the case of an application under the Land Registration Act, 1925, of a reference to the number of the relevant Registered Title, and shall in the body thereof specify the particular section of the Act or Acts under which relief is sought.

3. The Settled Land Act Chancery of Lancashire Rules 1883 shall be annulled.

4. These Rules may be cited as "The Chancery of Lancaster (Law of Property and other Acts) Rules, 1926."

5. The Chancery of Lancaster (Law of Property and other Acts) Rules, 1925, which came into operation on the 1st day of January 1926 as Provisional Rules shall continue in force until the eleventh day of October 1926, on which day the said Rules shall be superseded by these Rules.

*Cecil*,
Chancellor.
*Courthope Wilson*,
Vice Chancellor, Lancaster.

Dated the 18th day of June, 1926.
Approved by the Rule Committee of the Supreme Court.

*Claud Schuster*,
Secretary.

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## CHRISTMAS VACATION.

The Inner Temple Library will close on Friday, 24th December, at 2 o'clock, and re-open on Monday, 3rd January, at 10 o'clock.

# Legal Notes and News.

## Appointments.

Mr. ANTHONY DE FREITAS, O.B.E. (Senior Puisne Judge, Jamaica), has been appointed Chief Justice of British Guiana.

Mr. E. W. WHITELEY, an assistant in the department of the Town Clerk of Fulham, has been appointee chief clerk in that department.

Mr. R. MOELWYN-HUGHES, B.A., LL.B., of the Inner Temple, Barrister-at-law, Mr. H. E. SALT, M.A., LL.B., of Gray's Inn, Barrister-at-law, and Mr. M. R. EMMANUEL, M.A., B.C.L., of the Inner Temple, Barrister-at-law, have been appointed Assistant Tutors on the staff of The Law Society's School. Mr. Salt has held the Choate Memorial Fellowship at the Harvard Law School, and was elected a Fellow of Trinity in 1924. Mr. Moelwyn-Hughes won the Chancellor's gold medal for English Law at Cambridge University.

## Professional Announcements.

Messrs. ARTHUR TAYLOR & Co., Solicitors, have removed from 2, Fenchurch Avenue, E.C.3, to Maxwell House, No. 11, Arundel Street, Strand, W.C.2. Their telephone number will be Central 4510.

As from the 1st January, 1927, the name of the firm of Messrs. Rawle, Johnstone & Co., solicitors, 1, Bedford Row, W.C.1, will be "Gregory Rowcliffe & Co.," the change being a revival of an earlier name of the firm, as prior to 1887 the firm was styled "Gregory Rowcliffes & Co." It is of interest to recall that Sir Roger Gregory's grandfather, Mr. John Swarbreck Gregory, joined the firm in 1811, and his father, Mr. George Burrow Gregory became a partner in 1842, so that Sir Roger Gregory's family has been continuously connected with the firm for 115 years, whilst Mr. Edward Rowcliffe's uncle, the late Mr. Edward Lee Rowcliffe, joined the firm in 1854, and his father, Mr. William Rowcliffe, in 1860, the family of Mr. Rowcliffe having therefore been connected with the firm for an unbroken period of more than seventy-two years. The constitution of the firm will remain unaltered.

Consequent upon the retirement of Mr. E. C. Ferguson Davie from the firm of Park Nelson & Co., as from the 1st January, 1927, the practices of Messrs. ROY & CARTWRIGHT, WILLIAM CHURCHILL TAYLER & Co., and Mr. LEONARD JESSOPP FULTON (formerly carried on at 4, Brick Court, Temple, E.C.4), have been amalgamated with the practice of Messrs. PARK NELSON & Co., carried on at 11, Essex Street, Strand, W.C.2. These practices will in future be carried on by Arthur Croke Morgan, Robert Coare Swaine and Leonard Jessopp Fulton under the style of Park Nelson & Co., at 11, Essex Street, Strand, W.C.2.

Mr. GEORGE A. J. SMALLMAN, of 10/12, Copthall Avenue, London, E.C. (carrying on business as G. A. J. Smallman and Co.), has taken into partnership, as from the 1st December, 1926, his son, Mr. G. JOHN SMALLMAN. The business will, in future, be carried on at the same address, under the style of Smallman & Son.

## Partnerships Dissolved.

EDGAR CROSFIELD PEARSON, JAMES YATES, and JAMES DEAN GREEN, solicitors, 1, Dickinson Street, Manchester (March, Pearson, Yates & Green), by mutual consent as from 30th November, so far as relates to J. Yates. E. C. Pearson and J. D. Green will practise at 1, Dickinson Street under the title of March, Pearson & Green. J. Yates will practise at 16, John Dalton Street, Manchester, in partnership with J. Walter Robson, under the style of Risque, Robson & Yates.

ALAN COSENS and MAXWELL CORNISH BATTEN, solicitors, 5, Laurence Pountney Hill, E.C.4 (G. & A. Cosens), by mutual consent as from 30th November, as from which date A. Cosens retires from the firm. The business will be carried on in the future by Maxwell Cornish Batten under the present style of G. & A. Cosens.

## Wills and Bequests.

Mr. Francis George Smith, sixty-two, solicitor, of Apsley-crescent, and of Kirkgate, Bradford, left estate of the gross value of £11,246.

Sir Ernest FitzJohn Oldham, solicitor, of Palace-court, W., and of Chieveley, near Newbury, Berks, senior partner in Messrs. Vizard, Oldham, Crowder & Cash, solicitors, Lincoln's Inn-fields, Vice-President and Deputy Chairman of the Federation of British Industries, who died on 22nd September, aged fifty-six, left unsettled property of the value of £91,063, with net personalty £53,317. He gives (*inter alia*) £100 to Laura Wills, secretary; £100 each to Charles H. Garrett and John Britton, if still in the employ of his firm; and £50 to — Taylor, chauffeur.

Mr. Daniel MacTaggart (70), of West Park, Campbeltown, solicitor, Procurator-Fiscal of Argyll at Campbeltown, left personal estate of the gross value of £11,169.

Mr. David Morton Nicholson (72), solicitor, of Strathmore, Wath-upon-Dearne, Rotherham (chairman of the Wath Main Colliery Co., Ltd.), left estate of the gross value of £50,920.

Mr. Henry Spencer Andrew Fox, solicitor, of Laurence Pountney Lane, E.C. (who represented the Ward of Walbrook on the Corporation since 1911) left estate of the gross value of £3,964.

Mr. William Robert Sheldon, of Sand, Sidbury, Devon, Bencher of Lincoln's Inn, author of several legal works, who died on 17th October, aged sixty-nine, left unsettled property of the gross value of £70,931. He left, *inter alia*, £50 to his chauffeur, Edwin Williams, if still in his service and not under notice; £100 to his friend and former clerk, Joseph Piper. On the death of his wife, £200 each to the Sidmouth Cottage Hospital, the Royal Devon and Exeter Hospital, and the Arethusa Branch of the National Refuges for Homeless and Destitute Children; £100 to the Exeter Eye Hospital. The ultimate residue to the Warden and Fellows of Winchester College for providing assistance as they may see fit towards the education and maintenance at the College of the sons of men (preferably Wykehamists) who need such assistance.

### WIGAN POLICE AND THE COAL DISPUTE.

It was reported at a recent meeting of the Borough of Wigan Watch Committee that the Wigan police have decided to make no claim for rest days lost during the thirty-one weeks of the coal stoppage. This will save the town £2,099. The Watch Committee expressed their deep appreciation of the action of the force. It was stated that the cost of maintaining extra police during the coal dispute amounted to over £3,000, and the Home Office would contribute one-half of this.

### JUDGMENT OF ANGLO-GERMAN TRIBUNAL AGAINST DEUTSCHE BANK.

The Anglo-German Mixed Arbitral Tribunal (Second Division), sitting in London, allowed the claim of the National Mutual Life Assurance Society against the Deutsche Bank for the sum of £335 5*s.* standing to their credit on current account at the Brussels branch of the Deutsche Bank at the outbreak of the war.

It appeared that the compulsory administrator appointed by the German Government withdrew the deposit from the debtors' Brussels branch on 20th July, 1917, and transferred it to his own account with the Société de Belgique, Bruxelles, it being later transmitted to Germany. By the Spa Agreement, the money was restored to the Belgian Government on account of the creditors on 1st January, 1919. The German Government contended that the debtors must claim the money from the Belgian Government.

The Tribunal, in their judgment, said it was impossible to see how the return by the German Government to the Belgian Government of moneys belonging to the Deutsche Bank could in itself have any juridical effect upon the *jus in personam* of the claimants against the Deutsche Bank in respect of this debt. Nor would a decision that the debt was still due involve the consequence suggested in the arguments that the German Government would in the result have paid the amount twice over. Any difficulty that otherwise might have arisen in consequence of the terms of Art. 238 of the Treaty was expressly excluded by Art. 242, which read:—

> The provisions of this part of the present Treaty do not apply to the property, rights, and interests referred to in sections 3 and 4 of Part X. (Economic Clauses) of the present Treaty, nor to the product of their liquidation except so far as concerns any final balance in favour of Germany under Art. 243 (*a*).

Accordingly the Tribunal was unable to find anything in the facts of the case which had affected the right vested in the claimants at the outbreak of war to be paid by the Deutsche Bank the amount of the credit balance in their favour as it then stood in the books of the bank.

### JUDGE'S ADVICE TO A LITIGANT.

"Go and read 'Bleak House,'" was Mr. Justice Roche's advice to Mr. Charles William Wallace, a Scottish litigant in person, who asked for leave to appeal against his lordship's order dismissing his motion for judgment in default of defence in an action against the Surrey County Council. It appeared that a defence had been delivered in due time. "You belong to an intelligent race," said his lordship, "but you are wasting your own time and that of many other people, and you ask me to let you waste more by appealing against an order which is manifestly right. You will end by going crazy if you do not mind, as many people have done when they took to litigation in person. Go and read 'Bleak House.'"

A measure creating a Court of Appeal at Rhodes having jurisdiction over all the Italian Colonies in the Levant has been adopted by the Italian Cabinet.

The Lord Chancellor will preside at the annual fete of Dr. Barnardo's Homes, which will be held at the Royal Albert Hall on Thursday afternoon, 20th January.

## Court Papers.

### Supreme Court of Judicature.

| Date. | Rota of Registrars in attendance on Emergency Rota. | Appeal Court No. 1. | Mr. Justice Eve. | Mr. Justice Romer. |
|---|---|---|---|---|
| M'nd'y Dec. 20 | Mr. Hicks Beach | Mr. Ritchie | Mr. Synge | Mr. Ritchie |
| Tuesday .. 21 | Bloxam | Synge | Ritchie | Synge |
| Wednesday 22 | More | Hicks Beach | Synge | Ritchie |
| Thursday . 23 | Jolly | Bloxam | Ritchie | Synge |
| | Mr. Justice Astbury. | Mr. Justice Lawrence. | Mr. Justice Russell. | Mr. Justice Tomlin. |
| M'nd'y Dec. 20 | Mr. More | Mr. Jolly | Mr. Bloxam | Mr. Hicks Beach |
| Tuesday .. 21 | Jolly | More | Hicks Beach | Bloxam |
| Wednesday 22 | More | Jolly | Bloxam | Hicks Beach |
| Thursday . 23 | Jolly | More | Hicks Beach | Bloxam |

The Christmas Vacation will commence on Friday, the 24th day of December, 1926, and terminate on Thursday, the 6th day of January, 1927, inclusive.



## Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 30th December, 1926.

| | Middle Price 15th Dec. | Interest Yield. £ s. d. | Yield with Redemption. £ s. d. |
|---|---|---|---|
| **English Government Securities.** | | | |
| Consols 2½% .. .. .. .. | 54 | 4 13 0 | — |
| War Loan 5% 1929-47 .. .. .. | 100$\frac{3}{4}$ | 5 0 0 | 5 0 0 |
| War Loan 4½% 1925-45 .. .. | 93$\frac{7}{8}$ | 4 16 0 | 5 0 0 |
| War Loan 4% (Tax free) 1929-42 .. | 100$\frac{1}{2}$ | 3 19 6 | 4 0 0 |
| War Loan 3½% 1st March 1928 .. | 99 | 3 11 0 | 4 18 0 |
| Funding 4% Loan 1960-90 .. .. | 84$\frac{1}{2}$ | 4 14 6 | 4 15 0 |
| Victory 4% Bonds (available for Estate Duty at par) Average life 35 years .. | 92 | 4 7 0 | 4 9 0 |
| Conversion 4½% Loan 1940-44 .. | 93$\frac{1}{2}$ | 4 16 0 | 4 19 6 |
| Conversion 3½% Loan 1961 .. .. | 74$\frac{1}{2}$ | 4 14 0 | — |
| Local Loans 3% Stock 1921 or after .. | 62$\frac{1}{2}$ | 4 16 6 | — |
| Bank Stock .. .. .. .. | 245$\frac{1}{2}$ | 4 17 6 | — |
| India 4½% 1950-55 .. .. .. | 92 | 4 17 6 | 5 0 6 |
| India 3½% .. .. .. .. | 70$\frac{1}{2}$ | 5 0 0 | — |
| India 3% .. .. .. .. .. | 59$\frac{1}{2}$ | 5 1 0 | — |
| Sudan 4½% 1939-73 .. .. .. | 93$\frac{1}{2}$ | 4 16 0 | 5 0 0 |
| Sudan 4% 1974 .. .. .. .. | 83$\frac{1}{2}$ | 4 16 0 | 4 18 6 |
| Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) .. | 81$\frac{1}{2}$ | 3 14 0 | 4 12 0 |
| **Colonial Securities.** | | | |
| Canada 3% 1938 .. .. .. | 83 | 3 12 0 | 4 19 0 |
| Cape of Good Hope 4% 1916-36 .. | 91$\frac{1}{2}$ | 4 7 6 | 5 2 0 |
| Cape of Good Hope 3½% 1929-49 .. | 78$\frac{1}{2}$ | 4 9 0 | 5 1 0 |
| Commonwealth of Australia 5% 1945-75 | 98$\frac{1}{2}$ | 5 1 6 | 5 2 0 |
| Gold Coast 4½% 1956 .. .. .. | 94 | 4 16 0 | 4 17 6 |
| Jamaica 4½% 1941-71 .. .. .. | 91$\frac{1}{2}$ | 4 18 0 | 5 0 0 |
| Natal 4% 1937 .. .. .. .. | 92 | 4 7 0 | 4 19 0 |
| New South Wales 4½% 1935-45 .. | 87$\frac{1}{2}$ | 5 3 0 | 5 11 0 |
| New South Wales 5% 1945-65 .. .. | 94$\frac{1}{2}$ | 5 6 0 | 5 6 0 |
| New Zealand 4½% 1945 .. .. | 95$\frac{1}{2}$ | 4 14 0 | 4 18 0 |
| New Zealand 4% 1929 .. .. .. | 96$\frac{3}{4}$ | 4 3 0 | 5 6 0 |
| Queensland 5% 1940-60 .. .. .. | 95$\frac{1}{2}$ | 5 4 6 | 5 5 6 |
| South Africa 5% 1945-75 .. .. | 98$\frac{1}{2}$ | 5 1 0 | 5 1 0 |
| S. Australia 5% 1945-75 .. .. | 98$\frac{1}{2}$ | 5 2 0 | 5 2 6 |
| Tasmania 5% 1932-42 .. .. .. | 98$\frac{1}{2}$ | 5 1 0 | 5 2 6 |
| Victoria 5% 1945-75 .. .. .. | 97$\frac{1}{2}$ | 5 2 6 | 5 2 6 |
| W. Australia 5% 1945-75 .. .. | 99$\frac{1}{2}$ | 5 0 6 | 5 2 6 |
| **Corporation Stocks.** | | | |
| Birmingham 3% on or after 1947 or at option of Corpn. .. .. .. | 62 | 4 17 0 | — |
| Birmingham 5% 1946-56 .. .. | 101$\frac{1}{2}$ | 4 18 6 | 4 19 6 |
| Cardiff 5% 1945-65 .. .. .. | 100$\frac{3}{4}$ | 4 19 0 | 4 19 6 |
| Croydon 3% 1940-60 .. .. .. | 67$\frac{1}{2}$ | 4 9 0 | 5 2 0 |
| Hull 3½% 1925-55 .. .. .. | 76$\frac{1}{2}$ | 4 12 0 | 5 0 6 |
| Liverpool 3½% on or after 1942 at option of Corpn. .. .. .. | 72 | 4 17 0 | — |
| Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn. .. .. .. | 52 | 4 16 0 | — |
| Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn. .. .. .. | 61$\frac{7}{8}$ | 4 17 0 | — |
| Manchester 3% on or after 1941 .. | 63 | 4 15 0 | — |
| Metropolitan Water Board 3% 'A' 1963-2003 .. .. .. .. | 62$\frac{1}{2}$ | 4 16 0 | 4 18 0 |
| Metropolitan Water Board 3% 'B' 1934-2003 .. .. .. .. | 63$\frac{1}{2}$ | 4 14 6 | 4 17 0 |
| Middlesex C. C. 3½% 1927-47 .. .. | 80$\frac{1}{2}$ | 4 6 6 | 4 19 6 |
| Newcastle 3½% irredeemable .. .. | 72$\frac{1}{2}$ | 4 16 6 | — |
| Nottingham 3% irredeemable .. .. | 61$\frac{1}{2}$ | 4 17 6 | — |
| Stockton 5% 1946-66 .. .. .. | 100 | 5 0 0 | 5 0 0 |
| Wolverhampton 5% 1946-56 .. .. | 100$\frac{1}{2}$ | 5 0 0 | 5 0 0 |
| **English Railway Prior Charges.** | | | |
| Gt. Western Rly. 4% Debenture .. | 82 | 4 17 6 | — |
| Gt. Western Rly. 5% Rent Charge .. | 99$\frac{1}{2}$ | 5 0 6 | — |
| Gt. Western Rly. 5% Preference .. | 93$\frac{1}{2}$ | 5 7 0 | — |
| L. North Eastern Rly. 4% Debenture | 76$\frac{1}{2}$ | 5 4 6 | — |
| L. North Eastern Rly. 4% Guaranteed | 73$\frac{1}{2}$ | 5 9 0 | — |
| L. North Eastern Rly. 4% 1st Preference | 66 | 6 0 6 | — |
| L. Mid. & Scot. Rly. 4% Debenture .. | 80$\frac{1}{2}$ | 4 19 0 | — |
| L. Mid. & Scot. Rly. 4% Guaranteed .. | 78 | 5 3 0 | — |
| L. Mid. & Scot. Rly. 4% Preference .. | 73 | 5 9 6 | — |
| Southern Railway 4% Debenture .. | 81$\frac{1}{2}$ | 4 18 6 | — |
| Southern Railway 5% Guaranteed .. | 99 | 5 1 0 | — |
| Southern Railway 5% Preference .. | 94 | 5 6 0 | — |